OTIF

ORGANISATION INTERGOUVERNEMENTALE POUR LES TRANSPORTS INTERNATIONAUX FERROVIAIRES

ZWISCHENSTAATLICHE ORGANISATION FÜR DEN INTERNATIONALEN EISENBAHNVERKEHR

INTERGOVERNMENTAL ORGANISATION FOR INTERNATIONAL CARRIAGE BY RAIL

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Central Office Report on the Revision of the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980 and Explanatory Reports on the texts adopted by the Fifth General Assembly

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Foreword

The last in-depth revision of the International Convention concerning the Carriage of Passengers and Luggage by Rail (CIV) and the International Convention concerning the Carriage of Goods by Rail (CIM) goes back almost twenty years. This revision was completed at the end of the 8th Revision Conference (Bern, 30.4 - 9.5.1980) with the signing, on 9 May 1980, of the new Convention concerning International Carriage by Rail (COTIF).

In the years which have passed between May 1980 and the closing of the OTIF (Intergovernmental Organisation for International Carriage by Rail) 5th General Assembly in early June 1999, the railway world has undergone profound changes in the majority of the 39 Member States of OTIF. Even in 1995, the political, economic, legal and technical conditions governing international rail traffic were no longer the same as in 1980. These changes have raised the question of whether international railway law, as codified in COTIF 1980, was still adequate for these new situations and if it was able to offer satisfactory solutions in terms of answering new questions and resolving new problems, particularly those of a legal nature.

The Central Office, which considers itself to be a kind of engine for development and legal harmonisation at international level in railway matters, responded in the negative to this question and has demonstrated that there was a great need to adapt and devise regulations in those legal areas which are of importance for international rail transport. In spite of the scepticism and the reluctance expressed by some Member States, the railways, their associations and other international organisations, the Central Office is pleased to have succeeded in presenting, with its draft amendments, presented between 1995 and 1997, of COTIF 1980 itself, of the existing CIV, CIM and RID (Regulation concerning the International Carriage of Dangerous Goods by Rail) regulations, and with its draft new Appendices to COTIF (CUV - Uniform Rules concerning Contracts of Use of Vehicles in International Rail Traffic, CUI - Uniform Rules concerning Contracts of Use of Infrastructure in International Rail Traffic, APTU - Uniform Rules concerning the Validation of Technical Standards and the Adoption of Uniform Technical Prescriptions Applicable to Railway Material Intended to be used in International Traffic and ATMF - Uniform Rules concerning Technical Admission of Railway Material used in International Traffic), a complete legal system which is acceptable to all the parties concerned, at least in its fundamental elements, if not in every detail.

Achieving this necessitated a great deal of work in terms of persuasion, eliminating numerous misunderstandings and overcoming problems of comprehension. It required the preparation of 25 sessions, with either government representatives or experts, for a total period of 100 days, and recording the results (compilation of documents, translations, editing work, reports). The mass of documents, and the examination and processing of those documents, involved a work-load that was greater than that of previous years, and this not only at the Central Office.

The fact that the revision work, which took approximately four years, was successfully completed with the signing of the Vilnius Protocol upon the closing of the 5th General Assembly on 3 June 1999, is due not only to the Central Office and its staff members, who are very few in number, but also to the constructive attitude of the representatives of the Member States and of the involved international organisations and associations which developed in the course of the deliberations.

The Central Office would consider itself satisfied if the work done yielded long-lasting results. It again expresses its expectation that:

- the new legal system as a whole will contribute substantially to reinforcing the competitiveness of the railways in the highly competitive international transport markets

- the parties specifically affected by this new legal system, i.e. transport companies, goods carriers, passengers and administrations, will consider these new regulations to be fair and practicable

- that there will be no fundamental need for substantial amendment within the next ten to fifteen years.

Finally, the Central Office hopes that all those who participated in the revision work will be able to say that it was worth the effort!

The Central Office, in its capacity as Secretariat of OTIF, would thus be able to devote itself more intensively to new areas of activity in which a need for standardisation at international level is becoming apparent. Such activity would not be for the Central Office's own ends or for reasons of self-affirmation, but solely in the interest of all those who believe in the future of the railways and who still rely on this mode of transport.

The managers of the Central Office would like to use the occasion of this report to express personally their sincere thanks to the members of staff of the Central Office, the Chairmen of the various sessions of the Revision Committee and the General Assemblies, the delegates of the Member States and of the international organisations and associations and to the experts who advised the Central Office, for their commitment, their understanding, their constructive contributions and their perseverance.

Bern, September 1999

Central Office for International Carriage by Rail
Director General

(M. Burgmann)

Contents

List of acronyms and abbreviations

ADN	European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterway (1997 Draft)
ADNR	Regulation for the Carriage of Dangerous Substances on the Rhine, 1 January 1972
ADR	European Agreement concerning the International Carriage of Dangerous Goods by Road, 30 September 1957
AGC	European Agreement on Main International Railway Lines, 31 May 1985
AGCT	European agreement on Important International Combined Transport Lines and Related Installations, 1 February 1991
AIEP	International Association of Users of Private Sidings
AIM	Agreement on the International Carriage of Goods by Rail, 1 July 1907, in the version of 1 May 1985
AIV	Agreement on the International Carriage of Passengers and Luggage by Rail, 1 October 1928, in the version of 1 May 1985
APTU	Uniform Rules concerning the Validation of Technical Standards and the Adoption of Uniform Technical Prescriptions applicable to Railway Material intended to be used in International Traffic (Appendix F to COTIF)
Art.	Article
ATMF	Uniform Rules concerning the Technical Admission of Railway Material used in International Traffic (Appendix G to COTIF)
ATV	Uniform Rules concerning the Technical admission of Railway Vehicles (Draft Appendix to COTIF)
BCC	Central Compensation Bureau
BIC	International Containers Bureau
Brussels Convention	International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, 25 August 1924
Bulletin	Bulletin for International Carriage by Rail
CCNR	Central Commission for Rhine Navigation
CEN	European Committee for Standardisation

CENELEC	European Committee for Electrotechnical Standardisation
CER	Community of European Railways
Chicago Convention	Convention on Civil Aviation, 7 December 1944
CIM 1890	International Convention concerning the Carriage of Goods by Rail, 14 October 1890
CIM →1980	International Convention concerning the Carriage of Goods by Rail, 7 February 1970
CIM 1980	Uniform Rules concerning the Contract for International Carriage of Goods by Rail, 9 May 1980
CIM	Uniform Rules concerning the Contract for International Carriage of Goods by Rail (Appendix B to COTIF)
CIT	International Rail Transport Committee
CIV →1980	International Convention concerning the Carriage of Passengers and Luggage by Rail, 7 February 1970
CIV 1980	Uniform Rules concerning Contract for International Carriage of Passengers and Luggage by Rail, 9 May 1980
CIV	Uniform Rules concerning Contract of International Carriage of Passengers by Rail (Appendix A to COTIF)
CMR	Convention on the Contract for the International Carriage of Goods by Road, 19 May 1956
COTIF 1980	Convention concerning International Carriage by Rail (COTIF), 9 May 1980
COTIF	Convention concerning International Carriage by Rail (COTIF), 9 May 1980, in the version of the Amendment Protocol of 3 June 1999
CUI	Uniform Rules concerning the Contract of Use of Infrastructure in International Rail Traffic (Appendix E to COTIF)
CUV	Uniform Rules concerning Contracts of Use of Vehicles in International Rail Traffic (Appendix D to COTIF)
CVR	Convention on the Contract for the International Carriage of Passengers by Road, 1 March 1973

EC	European Community
ECJ	Court of Justice of the European Community
ECMT	European Conference of Ministers of Transport
EEA	European Economic Area
EEC	European Economic Community
EFTA	European Free Trade Association
EIM	European Infrastructure Management Organisation
ERRI	European Rail Research Institute
ETSI	European Telecommunications Standardisation Institute
EURO-CONTROL	European Organisation for Air Navigation Safety
FIATA	International Federation of Freight Forwarders Associations
Hamburg Rules	United Nations Convention on the Carriage of Goods by Sea (Hamburg Rules), 31 March 1978
Hague-Visby Rules	Convention for the Unification of Certain Rules of Law relating to Bills of Lading of 25 August 1924 (Brussels Convention), amended by the Protocol of 23 February 1968
IAEA	International Atomic Energy Agency
IATA	International Air Transport Association
ICAO	International Civil Aviation Organisation
IMDG Code	International Maritime Dangerous Goods Code
IMO	International Maritime Organisation
IRU	International Road Transport Union
IVT	International Association of Tariff Specialists
OSJD	Organisation for Railways Co-operation

OTIF	Intergovernmental Organisation for International Carriage by Rail
RIC	Regulation for the Reciprocal Use of Carriages and Brake Vans in International Traffic, 1 January 1922
RICo	Regulations concerning the International Carriage of Containers by Rail (Annex III of Appendix B to COTIF 1980)
RID 1980	Regulations concerning the International Carriage of Dangerous Goods by Rail (Annex I of Appendix B to COTIF 1980)
RID	Regulation concerning the International Carriage of Dangerous Goods by Rail (Appendix C to COTIF 1980)
RIEx	Regulations concerning the International Carriage of Express Parcels by Rail (Annex IV of Appendix B to COTIF 1980)
RIP	Regulations concerning the International Haulage of Private Owners§ Wagons by Rail (Annex II of Appendix B to COTIF 1980)
RIV	Regulation on the Reciprocal Use of Wagons in International Traffic, 1 January 1922
RTD	International Customs§ Transit System for Goods Transported by Railway (Draft Appendix to COTIF)
SDR	Special Drawing Right(s)
SMGS	Convention concerning International Goods Traffic by Railway, 1 November 1951
SMPS	Convention concerning International Passenger Traffic by Railway, 1 November 1951
SOLAS Convention	International Convention for the Safety of Human Life at Sea, 1 November 1974
UIC	International Union of Railways
UIP	International Union of Private Wagons
UIPT	International Union of Public Transport
UIRR	International Union of Combined Rail and Road Transport Companies
UIV	Uniform Rules concerning Contracts of Reciprocal Use and the Registration of Vehicles (Draft Appendix to COTIF)

UNECE	United Nations Economic Commission for Europe
UNIFE	Union of European Railway Industries
UNO	United Nations Organisation
UR	Uniform Rules
UT	International Convention on the Technical Unity of Railways, 1882/1938
Warsaw Convention	Convention of 12 October 1929 for the Unification of Certain Rules relating to International Carriage by Air

Central Office Report on the Revision of COTIF by theAmendment Protocol 1999 (Vilnius Protocol)

Adopted by the 5th General Assembly of OTIF

(Vilnius, 26 May to 3 June 1999)

Introduction

1. The authors of the first international convention concerning the carriage of goods by rail had already realised the need for regular adaptation to economic, legal and technical changes. By means of eight ordinary revision conferences and several extraordinary revision conferences, the Member States have been able not only to adapt the rail transport law to the continuous changes on a regular basis but also to preserve the unity of that law.

2. On the basis of the procedure for amendment of the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980 which was drawn up by the 8th Revision Conference in 1980 and came into force on 1 May 1985, a partial revision of COTIF was undertaken in the years 1989/1990 (see 1990 Bulletin, p. 30 ff. and p. 67 ff.). Nevertheless, an in-depth revision of this Convention, or indeed of the whole of international rail law, proved to be necessary just a short time afterwards.

3. Traditionally, following each revision, the Central Office, in its capacity as secretariat of the former Administrative Union and of the Intergovernmental Organisation for International Carriage by Rail (OTIF), in existence since 1985, has not only compiled a report on the revision work but has also published all the documents, in the form of a bound volume, including the reports on the sessions of the Revision Committee and on the Revision Conferences. This practice was abandoned for the first time on the occasion of the above-mentioned partial revision of 1989/1990, probably because of the fact that the work had been sufficiently documented by the reports on the two sessions of the Revision Committee and the report on the 2nd General Assembly of 1990.

4. For economic reasons, the Central Office has also ceased documentation of the in-depth revision of COTIF, completed with the signing of the Vilnius Protocol on 3 June 1999, in the form of a bound volume of all the revision documents and reports. From an economic viewpoint, the use which would probably have been made of such a volume and the relatively small number of users would not justify the work-load and the costs associated with such a publication, taking into consideration the large volume of documents and reports. Consequently, the Central Office has decided to present its report on the revision work, completed with the adoption of the Vilnius Protocol, in greater detail than usual. In addition to a general but succinct presentation of the legal bases, the development of the revision work and the essence of the main amendments, the report will contain, in an updated form, fairly detailed explanatory reports on the texts submitted to the 5th General Assembly.

5. Firstly, this report is intended to facilitate and accelerate the ratification, acceptance or approval, and thus the enforcement, of the Vilnius Protocol together with its Annex, COTIF, in its amended terms. In addition, this report is intended to facilitate the practical application of the Convention, based on a scientific approach.

Legal bases and objective of the revision

6. The revision procedure created by the 8th Revision Conference of 1980 provides for three different bodies which are competent to examine and decide upon amendment proposals, namely, the General Assembly, the Revision Committee and the Committee of Experts on the Carriage of Dangerous Goods. The revision procedure varies according to the body to which an amendment proposal must be submitted for binding decision. In particular, the decisions of the General Assembly must be ratified, accepted or approved, whereas that does not apply to the decisions of the other two bodies.

7. If an amendment proposal submitted to the General Assembly is closely connected to provisions whose amendment lies within the scope of competence of another body, the General Assembly may nevertheless assert its own competence in the matter (right of higher authority of the General Assembly). In view of the wide scope of the revision, it has proved inappropriate for certain amendment decisions to be taken by the Revision Committee and others by the General Assembly and for only the wording of provisions amended thus to be adopted. The General Assembly has made use of its right of higher authority and, at its 5th session, at Vilnius on 3 June 1999, has adopted not only the 1999 Protocol amending COTIF of 9 May 1980, but also the entire Convention in its new terms, including the Appendices. The amendment thus has the effect of preserving the legal continuity of COTIF in accordance with its Article 20 as well as the legal continuity of OTIF as an intergovernmental organisation.

8. *In accordance with the mandate granted by the 3rd General Assembly (Bern, 14-16.11.1995), the objective of the in-depth revision was to be:*

8.1 to find a solution “which seeks to provide a more solid institutional basis, within the framework ... of COTIF for the elimination of obstacles to the crossing of frontiers in international rail traffic” (Final Document, No. 7.7)

8.2 to find a solution to the problem of the composition of the Administrative Committee (Final Document, No. 7.8)

8.3 to devise, in consideration of a proposal by Belgium (General Assembly document AG 3/11 of 29.8.1995), Uniform Rules extending beyond the scope of transport law, namely (Final Document, No. 7.9)

- “transport vehicle traffic”, including technical standards concerning registration and technical admission of Railway Material on the basis of mutual recognition
- relations between the owners of wagons and transport undertakings (registration contract)

- relations between the owners of wagons and infrastructure managers and

- contracts relating to the Regulation concerning the International Carriage of Dangerous Goods by Rail (RID)

9. Having first noted the status of the preparatory work (of the Central Office) concerning the in-depth revision, the 3rd General Assembly had instructed the Central Office to complete the preparatory work, if possible, by the end of the first quarter of 1997 and to convene the 4th General Assembly during the 2nd quarter of 1997.

10. Neither the Revision Committee, with authority to examine all the amendment proposals submitted to the General Assembly for binding decision, nor the Central Office, was able to adhere to this very demanding schedule. After the Revision Committee had held a total of 11 sessions between the 3rd and the 4th General Assembly, the majority of these lasting one week, without being able to find solutions to numerous questions, some political, particularly in respect of the Basic Convention itself, the 4th General Assembly was convened (Athens, 8-11.9.1997) with the objective of discussing the substance of certain problems and taking decisions in principle. On the one hand, the 4th General Assembly merely noted the status of the work undertaken to that point, particularly in respect of the CIV, CIM, CUV and CUI Uniform Rules and the Regulation concerning the International Carriage of Dangerous Goods by Rail (RID). On the other hand, on the basis of the prepared documents, the General Assembly decided the guidelines in respect of the conduct of deliberations within the Revision Committee concerning the Basic Convention. In addition, it gave the “green light” for the preparation of uniform rules for the technical admission of rail vehicles to international traffic, including its technical bases. However, the General Assembly did not permit OTIF to deal in future with customs matters relating to rail transport (Central Office plan for a Supplementary Appendix on an international customs transit system).

Preparatory work

11. The following explanations are no more than a very brief outline of the total work done. Moreover, the preparatory work by the Central Office, the work by the various groups of experts, the compilation of the draft texts and the deliberations within the Revision Committee are described in detail in the explanatory reports on the adopted texts (Amendment Protocol, Basic Convention, etc.), which form part of this report.

12. In its circular letter of 22 January 1993, just a few days within a century after the first international Convention concerning the carriage of goods by rail came into force, the Central Office analysed in detail the consequences of separating infrastructure management from the provision of transport services, thereby launching the later work with a view to an in-depth revision of COTIF (see Nos. 11-18 of General Points relating to the CIM Uniform Rules).

13. The Central Office has compiled all of the draft texts of a “new” COTIF, including the Amendment Protocol and the Protocol on the privileges and immunities of the Organisation, as well as the related eight Appendices planned initially (for more details, see No. 2 of General Points relating to the Protocol 1999).

14. The Revision Committee discussed these drafts in the course of a total of 21 sessions (the 1st and 2nd sessions of the Revision Committee had already taken place in 1989/1990). The draft texts submitted to the 5th General Assembly are the result of 90 days of negotiations within the Revision Committee. 32 Member States participated in the Revision Committee sessions, although only eight States (Belgium, Czech Republic, France, Germany, Italy, Netherlands, United Kingdom and Switzerland) were represented at all the Revision Committee sessions. The Slovak Republic participated in 20 sessions, Hungary, Liechtenstein and Poland in 19 sessions, Romania in 18 sessions, Greece and Portugal in 16 sessions, Bulgaria in 14 sessions, Finland and Lithuania in 13 sessions, Austria and Croatia in 11 sessions, Spain, Monaco and Sweden in 10 sessions, Norway and Turkey in 8 sessions, Luxembourg in 6 sessions, Denmark in 5 sessions, Bosnia-Herzegovina in 3 sessions, Algeria and the Lebanon in 2 sessions and Albania and Tunisia in one session. The following States did not participate at all in the Revision Committee's deliberations: Iran, Iraq, Ireland, the former Yugoslav Republic of Macedonia, Morocco, Slovenia and Syria. A quorum was not achieved in 4 of the 21 sessions, and only temporarily achieved in 2 of the other sessions. In the sessions in which a quorum was not achieved, the Revision Committee discussed the texts without being able to adopt them definitively.

15. Although, initially, the Member States and the international organisations and associations participating in the capacity of observers defended widely diverging positions, due to the co-operation within the Revision Committee and the constructive attitude of the participants, it was possible, in almost all cases, to arrive at solutions supported by the vast majority of the Member States.

Progress of the 5th General Assembly

16. The results of the work of the Revision Committee were submitted to the 5th General Assembly of the Organisation (General Assembly Final Document AG 5/3.1-10 of 15.2.1999) which, by application of Article 6 of COTIF, sat in Vilnius from 26 May to 3 June 1999 at the invitation of the Lithuanian Government.

17. Of the 39 Member States of OTIF, 29 participated in the general Assembly: Algeria, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Italy, Liechtenstein, Lithuania, Luxembourg, Netherlands, Norway, Poland, Portugal, Romania, Slovak Republic, Spain, Sweden, Switzerland, Syria, Tunisia, United Kingdom.

18. Also participating: 3 States in the capacity of observer (Egypt, Estonia, Latvia), the European Commission, one international organisation (OSJD - Organisation for Railways Co-operation) and 7 international associations (CIT - International Rail Transport Committee CEN - European Committee for Standardisation, IRU - International Road Transport Union, IVT - International Association of Tariff Specialists, UIC - International Union of Railways, UIP - International Union of Private Wagons, and UIRR - International Union of Combined Rail and Road Transport Companies).

19. In accordance with Article 6 of the Rules of Procedure of the General Assembly, the function of secretariat was provided by the Central Office.

20. The General Assembly elected Vytautas Naudužas (Lithuania) as Chairman, M.Anders Iacobæus (Sweden) as 1st Vice-Chairman and M. László Polgár (Hungary) as 2nd Vice-Chairman.

21. *The General Assembly appointed the following commissions, which are constituted as follows:*

21.1 Committee for verification of powers: Chairman M. Rudolf Metzler (Switzerland), vice-Chairman M. Jan J. Hilt (the Netherlands); members: Lithuania, Romania, Syria, the Czech Republic.

21.2 Drafting commission: Chairman Mme Marie-Noëlle Poirier (France), Co-Chairman M. Thomas Edler von Gäßler (Germany) and M. Robin Bellis (United Kingdom); members - French text drafting: Belgium, France, Switzerland, Tunisia; members - German text drafting; Germany, Switzerland; members - English text drafting: Finland, United Kingdom.

22. The General Assembly conducted deliberations on the basis of the Rules of Procedure which it had adopted on 2 October 1985, but with the amendments which were decided upon at the start of this session and which came into force immediately following their adoption (see No. 7.2 of the Final Document and associated Annex I).

23. The General Assembly noted the report of the Director General of the Central Office on the result of the preparatory deliberations within the Revision Committee in respect of the amendments to the Convention.

24. Despite the prolonged and intensive preparatory work by the Central Office and the Revision Committee, the 5th General Assembly still had to discuss approximately 150 amendment proposals or suggestions, 30 of which were identical. This task was successfully completed within a relatively short period of time, thanks not only to the Chairman of the General Assembly, but also to the constructive attitude of the delegates.

25. The “1999 Protocol”, known as the Vilnius Protocol, for the modification of the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, was adopted by the 5th General Assembly in three language versions, without any votes against but with three abstentions (for more details, see No. 3 of General Points relating to COTIF, No. 15 of General Points relating to the CUI Uniform Rules, No. 7 of General Points Relating to the APTU Uniform Rules and No. 15 of General Points relating to the ATMF Uniform Rules, as well as the Report of the 5th General Assembly, pp. 23-26 and p.169). The Protocol was opened for signature in Vilnius on 3 June 1999. It was signed on that date by 22 Member States : Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Denmark, Germany, Greece, Hungary, Italy, Liechtenstein, Lithuania, Luxembourg, Poland, Romania, Slovak Republic, Spain, Sweden, Switzerland, Syria and the United Kingdom.

Principal points of the revision of COTIF

26. Summarised below are the essential elements of the COTIF revision. For more details, reference should again be made to the explanatory reports on the adopted texts which constitute part of this report.

27. *Institutional matters (Amendment Protocol and Basic Convention in its new version)*

27.1 In addition to the Foreword which sets out the considerations which led to the in-depth revision of COTIF, the *Amendment Protocol 1999* contains provisions of international public law which are necessary to achieve the transition from COTIF 1980 to Convention in its amended version. In future, OTIF will assume the role of depositary in place of the current depositary, the Swiss Government.

27.2 The following amendments are mentioned in respect of the *Basic Convention* in the new version:

27.2.1 The purpose of the organisation has been expanded considerably. In future, OTIF is to contribute to the elimination of the obstacles to the crossing of frontiers in international rail traffic insofar as the causes of such obstacles come within the jurisdiction of the States. In addition, it is to contribute to interoperability and technical harmonisation within the rail sector through the validation of technical standards and the adoption of uniform technical prescriptions.

27.2.2 The Member States undertake, in principle, to concentrate their international co-operation efforts in rail matters within OTIF.

27.2.3 The Organisation will constitute a framework within which the Member States can devise other international conventions which will promote, improve and facilitate international rail traffic.

27.2.4 In addition to French and German, English is accepted as a third working language. The General Assembly may introduce other working languages.

27.2.5 A Committee of Technical Experts and a Rail Facilitation Committee have been newly created.

27.2.6 The Administrative Committee, to be composed in future of one third of the Member States (instead of the fixed number of 12 as at present), is appointed for three years (5 years hitherto) in order to permit more frequent changes and hence more intensive participation by as many Member States as possible. The General Assembly is also in future to meet regularly every three years (instead of every 5 years as at present).

27.2.7 From now on, a biennial basis is to be used for the work programme, the budget and the accounts.

27.2.8 The tasks of the Central Office, as the secretariat of the Organisation, are in future to be fulfilled by a Secretary General, as a representative of OTIF, nominated by the General Assembly.

27.2.9 A list of lines constituting a basis for the application of the CIV/CIM Uniform Rules is kept, in principle, only in respect of maritime and trans-frontier inland waterway services.

27.2.10 The new financing system takes account of both the length of the railway infrastructure of the Member States and their economic rating according to the allocation key for contributions to the United Nations.

27.2.11 The revision procedure has been accelerated further. Nevertheless, the objective of subjecting all the Appendices, in their entirety, to the simplified revision procedure has not yet been achieved.

27.2.12 Accession to the Convention is open to regional economic integration organisations which are themselves competent to adopt their legislation which is mandatory for their members (e.g. the European Economic Community).

27.2.13 The status of "Associate Member" has been introduced.

28. *International law on the carriage of passengers (CIV Uniform Rules)*

28.1 In principle, the application of the Uniform Rules is independent of a system of registered lines.

28.2 In future, the international contract of carriage by rail is to be conceived as a consensual contract (hitherto: formal contract), as is the case with maritime transport, in accordance with the Athens convention of 1974 and with air transport, in accordance with the Warsaw Convention.

28.3 The CIV Uniform Rules no longer provide for any obligation to carry or any tariff obligation and they grant the contracting parties a large amount of contractual freedom.

28.4 The majority of the maximum liability amounts have been increased (exception: loss of and damage to transported motor vehicles).

28.5 The legal status of the substitute carrier is regulated following the example of the Athens Convention of 1974.

28.6 The carrier is liable in respect of the client, even in the case of damages whose cause lies within the scope of responsibility of the manager of the rail infrastructure.

28.7 Provision is made for strict, objective liability on the part of the carrier in cases of the cancellation of trains, delay or missed connections; there are only a few recognised grounds for exemption from this liability, but on the other hand consequential damage is limited (accommodation costs and costs occasioned by the notification of persons awaiting the traveller).

29. *International law on the carriage of goods (CIM Uniform Rules)*

29.1 Harmonisation with the transport law as applicable to other modes of transport, particularly with the Convention on the Contract for the International Carriage of Goods by Road (CMR), has been achieved to a large extent.

29.2 In principle, the application of the Uniform Rules is independent of a system of registered lines.

29.3 A contractual extension of the area of application is possible when only the place of departure *or* the place of destination is located within a Member State. This also permits the concluding of direct contracts of carriage, in accordance with the CIM Uniform Rules, in East-West traffic with States in which the Convention concerning International Goods Traffic by Railway (SMGS) is applied.

29.4 The contract of carriage is conceived as a consensual contract (hitherto: actual, formal contract); the railway consignment note is only a documentary proof. In this, the international law on the carriage of goods by rail follows the solution that is applicable to other modes of transport (CMR, Hamburg Rules, Warsaw Convention).

29.5 The CIM Uniform Rules no longer provide for an obligation to carry or any tariff obligation. The contracting parties are accorded a large amount of contractual freedom, e.g. in respect of determination of the itinerary, delivery timeframes and conditions of payment.

29.6 The maximum liability amount of 17 Special Drawing Rights is maintained. The carrier may, however, extend his liability in the future.

29.7 The legal status of the substitute carrier is regulated following the example of the Hamburg Rules.

29.8 In place of the provisions currently included in the Regulations concerning the International Haulage of Private Owners§ Wagons by Rail (RIP), special provisions have been devised within the framework of the CIM Uniform Rules in respect of the transportation of vehicles as goods, as well as in respect of the basis of liability (liability for presumed fault) and compensation (use value). These special provisions also apply to the transportation of intermodal transport units.

29.9 The grounds for exemption from liability are reduced in respect of rail-sea traffic, in particular, nautical error is not a ground for exemption.

30. *International Carriage of Dangerous Goods by Rail (RID)*

30.1 The Regulation concerning the International Carriage of Dangerous Goods by Rail (RID) becomes an Appendix to COTIF. The application of RID therefore no longer depends on the existence of a CIM contract of carriage.

30.2 Creating definitions of those participating in a transport operation involving dangerous goods and laying down their obligations (in the Annex to RID) results in greater legal clarity.

30.3 In the Annex to RID, legal bases are contained for special provisions concerning complementary transportation on maritime routes.

30.4 Provisions are also be provided in the Annex to RID in respect of administrative co-operation, safety advisors and a uniform system of reports on accidents or incidents.

30.5 The Annex to RID will contain new, detailed regulations concerning the carriage of dangerous goods such as hand-held packages, luggage or on board motor vehicles in car-couchette trains.

30.6 The “technical” Annex of RID will be structured in a user-friendly manner (for easier application); this work, however, has not yet been completed.

31. *Use of Vehicles in International Rail Traffic (CUV Uniform Rules)*

31.1 A clear distinction is made between technical admission and the contract of use of vehicles.

31.2 All categories of wagons (until now, wagons called network wagons, private wagons and other wagons, which are not registered with a railway for the purpose, for example, of fulfilling a peak period requirement) and all forms of contract of use are treated in the same manner, as optional law. The distinction made at present between the different types of contract (“registration contract”) is removed.

31.3 The contracting parties have been accorded a very large amount of contractual freedom. It will still be possible to conclude multilateral contracts, as at present, in accordance with the Regulations on the Reciprocal Use of Wagons (RIV) and Carriages and Vans (RIC) in International Transport.

31.4 The CUV Uniform Rules are limited to regulating the liability and subsidiary place of jurisdiction. Only the provisions concerning prescription are binding.

32. *Use of the Railway Infrastructure in International Traffic (CUI Uniform Rules)*

32.1 The CUI Uniform Rules are limited to regulating the contractual relations, particularly the responsibility, between the manager of the railway infrastructure and the carrier, as well as the actions of the auxiliaries of the infrastructure manager or of the carrier against the other party to the contract of use. They do not affect provisions of public law, such as e.g. the European Community (EC) directives concerning rights of access and the conditions of the latter.

32.2 Binding provisions concerning liability prevent the uniform regulations from being bypassed by competing proceedings (tort or quasi-tort).

32.3 In other respects the CUI Uniform Rules accord a large amount of contractual freedom to the parties in the devising of their rights and obligations, e.g. with regard to the scope of use, payment, duration of the contract, etc.

32.4 The courts of the Member State in which the registered office of the infrastructure manager is located are designated as the subsidiary place of jurisdiction.

32.5 The period of limitation for actions (3 years) is made compulsory.

32.6 Litigation agreements are permitted: the parties to the contract may agree conditions in which they will assert their rights to compensatory damages in respect of the other party to the contract or in which they will renounce the assertion of such rights.

33. *Law on the Technical Admission of Railway Material*

33.1 *Validation of Technical Standards and Adoption of Uniform Technical Prescriptions (APTU Uniform Rules)*

33.1.1 The APTU Uniform Rules stipulate the procedure for *validation* of technical standards and for the adoption of uniform technical prescriptions applicable to railway material intended to be used in international traffic.

33.1.2 The validated technical standards and the adopted technical prescriptions will be incorporated in the Annexes of the APTU Uniform Rules.

33.1.3 The purpose of the APTU Uniform rules is to ensure interoperability of the technical systems and components which are necessary in international rail traffic to facilitate the free use of railway material in international traffic.

33.1.4 The validated technical standards and the adopted uniform technical prescriptions must contribute to the ensuring of safety, reliability and availability in international traffic and must take account of the protection of the environment and public health.

33.1.5 The devising of technical standards and uniform technical prescriptions remains within the competence of the national or international standardisation bodies which have been responsible for these matters hitherto (e.g. CEN, CENELEC, ETSI, etc.) or the international organisations concerned with railway matters, such as the UIC and OSJD.

33.1.6 A request for validation may be lodged by any Member State, by any regional economic integration organisation with authority to legislate in matters of technical standards and technical prescriptions relating to rail stock (e.g. the EC) and by any representative international association (e.g. the UIC, OSJD). In addition, national or international standardisation bodies may lodge requests for validation of a technical standard.

33.1.7 The APTU Uniform Rules establish, in rail matters, a legal basis which is similar to that provided in the Geneva Agreement of 1958 on homologation with regard to road traffic.

33.1.8 The validated technical standards will both take over from the International Convention on the Technical Unity of Railways dating from 1882/1938 and replace the various provisions of the RIV and RIC, as well as the UIC technical leaftlets.

33.2 *Technical Admission of Railway Material Used in International Traffic (ATMF Uniform Rules)*

33.2.1 The ATMF Uniform Rules establish the procedure according to which railway vehicles and other railway material are admitted for use in international traffic.

33.2.2 The technical admission comes within the scope of competence of the national authorities (or international authorities if applicable) having competence in such matters in accordance with the laws and provisions in force in each Contracting State.

33.2.3 The authorities may transfer to recognised qualified bodies, including companies, the competence to grant technical admission, provided that this is monitored by the authorities. However, the creation of monopolies for the benefit of companies which are in a competitive situation is prohibited.

33.2.4 Technical admission is to be effected either by the granting of *admission to operation* to a given individual railway vehicle or by the granting (in two stages) of *admission of a type of construction* to a given type, followed by the granting of operating approval to individual vehicles which conform to this construction type, using a simplified procedure.

33.2.5 Technical admission is to be effected on the basis of the technical standards validated and the technical specifications adopted in accordance with the APTU Uniform Rules.

33.2.6 Technical admission by the competent authority of a Contracting State must be recognised by the authorities, rail transport undertakings and infrastructure managers without any need for re-inspection or technical re-approval.

33.2.7 Technical admission is to be proved by means of certificates drawn up in accordance with uniform models.

33.2.8 Vehicles may not be immobilised or refused by an authority, rail transport undertaking or infrastructure manager of another State unless the ATMF Uniform Rules, APTU Uniform Rules or the provisions relating to construction and equipment contained in the Annex of RID have not been adhered to.

33.2.9 A databank of railway vehicles approved for international rail traffic is to be compiled under the authority of OTIF.

Concluding remarks

34. In conclusion, it can be said that the Vilnius Protocol has extended the powers and area of activity of OTIF in such a way that, in the medium term, this organisation will be able to become an intergovernmental organisation following the example of the International Maritime Organisation (IMO) and the International Civil Aviation Authority (ICAO), with responsibility for dealing, at state level, with all questions relating to this mode of transport.

35. With the signing of the Amendment Protocol, known as the Vilnius Protocol, on 3 June 1999, an important step was taken in the development of international rail transport. The 1999 Protocol remains open for signature at Bern, with the Provisional

depositary, OTIF, until 31 December 1999. After that date, the Member States of OTIF will still be able to accede to the Protocol (Art. 3, § 3).

36. Nevertheless, the 1999 Protocol and, consequently the revised COTIF, will not come into force until they have been ratified, accepted or approved by more than two thirds of the Member States, i.e., by at least 27 States. Experience with the Amendment Protocol of 20 December 1990, which was not able to come into force until 1 November 1996, gives grounds to fear that the Vilnius Protocol will not come into force for about 4 or 5 years.

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 [1]

Background

37. The decisions taken by the 5th 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 5th 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).

38. 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 3rd General Assembly (4 - 6.11.1995, 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)

1 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.

- 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)

- 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)

39. 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)

- 3rd session of the Revision Committee: 1st reading of the draft CIM Uniform Rules (11 - 15.12.1995)

- Central Office meeting with experts in wagon law (9 - 11.1.1996)

- 4th session of the Revision Committee: continuation of the 1st reading of the draft CIM Uniform Rules (25 - 29.3.1996)

- 5th session of the Revision Committee: 1st reading of the draft CIV Uniform Rules (17 - 21.6.1996)

- 6th session of the Revision Committee: continuation of the 1st reading of the draft CIM Uniform Rules (26 - 29.8.1996)

- 7th session of the Revision Committee: continuation of the 1st reading of the draft CIV Uniform Rules (14 - 18.10.1996)

- 8th session the Revision Committee: 1st reading of the draft UIV Uniform Rules (11 - 15.11.1996)

- 9th session of the Revision Committee: 1st reading of the draft RUI (Uniform Rules concerning the Contract of Use of the Railway Infrastructure) (9 - 13.12.1996)

- 10th session of the Revision Committee: 1st reading of the draft COTIF (25 - 28.2.1997)

- 11th session of the Revision Committee: continuation of the 1st reading of the draft COTIF (18 - 20.3.1997)

- 12th session of the Revision Committee: continuation of the 1st reading of the draft UIV Uniform rules (5 - 7.5.1997)

- 4th 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.

- 13th session of the Revision Committee: 2nd 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)

- 14th session of the Revision Committee: continuation of the 2nd reading of the draft COTIF (19 - 23.1.1998)

- 15th session of the Revision Committee: 1st reading of the draft APTU Uniform Rules and ATMF Uniform Rules (2 - 6.3.1998)

- 16th session of the Revision Committee: 2nd 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 B Uniform Rules concerning Contract of Use of Railway infrastructure (subsequently : CUI Uniform Rules) and CIV Uniform Rules (4 - 7.5.1998)

- 18th session of the Revision Committee: continuation of the 1st reading of the draft APTU Uniform Rules and ATMF Uniform Rules (25 - 28.5.1998)

- 19th session of the Revision Committee: continuation of the 2nd reading of the draft COTIF (9 - 12.6.1998)

- 20th session of the Revision Committee: 2nd reading of the draft RID and continuation of the 2nd reading of the draft UIV Uniform Rules (subsequently : CUV Uniform Rules) and CIM Uniform Rules (1/2.9.1998)

- 21st session of the Revision Committee: third reading of the draft COTIF, 1st 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)

- 22nd session of the Revision Committee: 2nd reading of the draft Amendment Protocol 1999, in part, 4th 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)

- 23rd 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)

40. 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 17th session. See also the Explanatory Report on RID.

41. 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 4th General Assembly had decided that COTIF should not include such an Appendix (see also 1998 Bulletin, p. 370).

42. The results of the deliberations (with the exception of the results of the 23rd 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 5th General Assembly took its decisions.

43. At the final vote, the 5th 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 boarders (“ease”)

   - Technical questions (harmonisation and standardisation of vehicles and the infrastructure). The elimination of obstacles in the crossing of boarders 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, as far as civil aviation and maritime navigation are concerned, all of these questions are dealt with by single intergovernmental organisations, namely, the ICAO and the IMO. 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 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 beginning privatisation of those companies (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, from time immemorial 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 may not be 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 boarder, 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 such a 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 5th 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 the past, in establishing the sufficient quorum, 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. Declarations and reservation, 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 only 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 5th 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 1st 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 5th 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. Furthermore, 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 contracts of carriage 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 21st 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 21st 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 5th 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 5th 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 5th 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).

Convention concerning International Carriage by Rail (COTIF)

of 9 May 1980

in the version of the Protocol of Modification of 3 June 1999

Explanatory Report [2]

General Points

1. To avoid repetition, reference is made to the General Points of the Explanatory Report on the 1999 Protocol proper.

2. In addition to the amendments and additions made to the content of the currently applicable COTIF, which are explained below, the latter has been systematically re-edited.

3. The 5th General Assembly (26.5 - 3.6.1999) unanimously adopted the new version of COTIF, with the exception of Title IV, Finances (2 votes against: France and Tunisia, and 1 abstention: Algeria) and Title VII, Final Provisions (3 abstentions: Germany, Hungary, Slovak Republic) (Report, p. 179).

4. After the entry into force of COTIF 1999, further changes had to be made, firstly to take account of developments in relation to the use of the gold franc and the role of the International Monetary Fund, and secondly to comply with the Auditor's recommendations to update the accounting provisions (to align them with international standards). The 24th session of the Revision Committee (Berne, 23-25.6.2009) adopted corresponding amendments to Articles 9 and 27 §§ 2 to 10, which entered into force on 1 December 2010. See the additional parts of the Explanatory Report below.

In particular

Title 1

General Points

Article 1
Intergovernmental Organisation

1. Article 1, §§ 1 to 6 corresponds to Article 1, §§ 1 to 3 of COTIF 1980. Together with Article 1 of the 1999 Protocol, it secures the legal and organisational continuity of the Intergovernmental Organisation for International Carriage by Rail (OTIF) as an independent intergovernmental organisation.

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2 The articles, paragraphs, etc. which are not specifically designated are those of COTIF; unless otherwise evident from the context, the references to the reports on sessions not specifically identified relate to the sessions of the Revision Committee.

2. § 2, second sentence, based on Article 54, letter c) of the Geneva Convention of 6 March 1948 concerning the creation of the International Maritime Organisation (IMO), is intended to allow much greater flexibility with regard to the headquarters of the Organisation in the event of it proving judicious to transfer the headquarters to a different location for economic, political or other reasons. A (partial) amalgamation with the Organisation for Railways Co-operation (OSJD) in Warsaw or the development of OTIF towards an intergovernmental organisation operating on a global scale, following the example of the International Maritime Organisation (IMO) and the International Civil Aviation Organisation (ICAO), could motivate the General Assembly to take a decision to this end. In accordance with Article 14, § 6, a decision by the General Assembly to transfer the OTIF headquarters would, nevertheless, require a two-thirds majority.

3. With regard to § 4, it must be emphasised that the representatives of the Member States enjoy the privileges and immunities provided for by the relevant Protocol only when participating in a session of a body of the Organisation in the capacity of official delegates. These privileges and immunities are accorded to them in all the Member States, and not only in the State in which the headquarters of the Organisation is located.

4. The question of whether the Headquarters Agreement of 10 February 1988 between the Swiss Confederation and OTIF (creation of OTIF on 1 May 1985), mentioned in § 5, is to be submitted for revision, is a question to be examined at a later date.

5. In view of the primordial importance generally accorded to English at international level, an importance which is also increasing in field of rail traffic (for the States, the companies and the users), English has been introduced as the third working language of the Organisation (§ 6). Such a measure has been imperative for a long time, and is a pre-condition for the development of OTIF into an intergovernmental organisation operating on a global scale. The fixed costs associated with the introduction of a third working language should be less than 300,000.- CHF per annum (Swiss salaries and prices index: 1998). Additional personnel required would be a translator and a secretary. Due to number of meetings held per year, there would also be additional costs for simultaneous interpretation, as well as the one-off costs for the installation of interpretation booths.

6. Due to their special and historical importance in railway matters, German and French have been retained as working languages. The possible introduction of other working languages (in addition to English, French and German) would have to be decided by the General Assembly, particularly in consideration of the accession of other States and the extent of rail traffic on their territories. Firstly, it would concern the introduction of Russian. The Revision Committee, however, has rejected a provision whereby Russian would automatically become a working language in the event of two Russian-language States acceding to COTIF (Report on the 10th session, p. 6).

Article 2
Aim of the Organisation

1. Article 2 corresponds, essentially, to Article 2 of COTIF 1980, but with the aim of

the Organisation being universal in the future. OTIF will have to be capable of dealing with all aspects of international rail traffic, with a view to promoting, improving and facilitating it. This does not apply to those matters which come within the remit of the rail companies (transport companies and infrastructure managers) such as, for example, marketing, tariffs, timetables, operation, etc., but to those matters which come within the remit of the States and which were, in fact, previously entrusted to the railways (see No. 8). With regard to the demarcation between state and company powers, the Central Office, in its drafts of 1995/1996 for a new COTIF and its Appendices, was guided by the policy and legislation of the European Community (EC), particularly the Directive 91/440/EEC.

2. The development of international rail transport law will remain one of the essential tasks of OTIF (§ 1, letter a), No. 1). This task corresponds

   - in the field of aviation, to the administration of the Warsaw Convention by the ICAO

   - in the field of maritime navigation, to the administration of the Athens Convention, the Visby Rules and the Hamburg Rules by the IMO

   - in the field of inland waterway navigation, to the establishment of an international transport law for inland waterway navigation (CMNI project) by the Central Commission for Rhine Navigation (CCNR) in co-operation with the Danube Commission and the United Nations Economic Commission for Europe (UNECE).

3. The Regulations concerning the International Haulage of Private Owner's Wagons by Rail (RIP), Annex II to the CIM Uniform Rules (CIM UR) 1980, is replaced by Uniform Rules which regulate, in a general manner, the different types of contracts of use of vehicles as means of transport in international rail traffic. In this context, a distinction will no longer be made between network wagons and private wagons; the new CUV Uniform Rules (CUV UR - Appendix D of the Convention) will also partially replace provisions of the Regulation on the Reciprocal Use of Wagons in International Traffic (RIV - § 1, letter a), No. 2, see also the Explanatory Report on the CUV Uniform Rules.

4. The function provided for by § 1, letter a), No. 3 is the result of the legal and organisational separation of transport from infrastructure management which has been undertaken or is planned in certain Member States. On an international scale, it is judicious to regulate in a uniform manner the legal, contractual relations between the rail transport companies and the infrastructure managers, particularly the questions relating to liability. The CUI Uniform Rules (CUI UR - Appendix E of the Convention), however, do not deal with the question of knowing the commercial or public law criteria according to which the infrastructure resources are made available to rail carriers. For the Member States of the EC and the States which are party to the Agreement on the European Economic Area (EEA), this question is already the subject-matter of the Directive 95/19/EC.

5. § 1, letter a), No. 4 provides for the development of the legal system for dangerous goods (RID), but in the form of a public law system, i.e., independently of the provisions of the transport law, a private law system, namely, of the CIM Uniform Rules (Appendix B of the Convention).

6. The active participation in the removal of obstacles to the crossing of frontiers (§ 1, letter b) should constitute another important function of OTIF - as for the ICAO, in the case of civil aviation. This corresponds to the decisions of the 2nd General Assembly of 20 December 1990 (No. 7, letter l) of the Final Document) and of the 3rdGeneral Assembly of 16 November 1995 (No. 7.7 of the Final Document).

7. The words “taking into account special public interests” were introduced into § 1, letter b) upon proposal by Germany, since the acceleration of the crossing of frontiers cannot constitute an absolute objective, but that other important aspects must also be taken into account, such as the prevention of clandestine immigration or drug trafficking, which represent “special public interests”. This also corresponds to the Conventions cited under No. 2, concerning civil aviation and maritime navigation (Report on the 19th session, p. 5).

8. Numerous international rail traffic problems are attributable to technical differences between railways (different track gauges, differences in electrical power supply systems, signalling, braking systems, etc.). Consequently, efforts which seek to achieve technical harmonisation for the purpose of compatibility or interoperability are becoming increasingly important in order to ensure and enhance the competitiveness of rail in international traffic (§ 1, letter c). To this end, the promising approach constituting the basis of the International Convention on the Technical Unity of Railways (UT) of 1882/1938, which was concluded at state level, is taken up again. If one considers the influence that, to a very large extent, technical standards can exert on the competition between the rail companies and on the access to the market and foreign infrastructures, the validation of technical standards and specifications which are applicable to rail stock (specifications concerning its construction and operation) cannot be entrusted exclusively to the rail transport companies, as is actually the case at present in the majority of Member States. As far as rail traffic is concerned, the States should again take on their responsibilities in this matter, as they have always done in connection with standards and supervision in such areas as, for example, road transport and civil aviation. This concept is fundamental to the European Commission initiative concerning the Directive 96/48/EC on interoperability.

9. Just as technical standards and specifications can influence competition in rail traffic, so too can the technical admission of railway material intended for use in international traffic. In future, the technical admission procedure will be conducted uniformly on the basis of mandatory technical standards and uniform technical prescriptions in particular for construction and operation, established at international level (§ 1, letter d). It would even be conceivable, in the medium term, to entrust their execution, i.e., the actual technical admission, to the Organisation. Article 4, § 3 creates a legal basis for this (see Nos. 3 and 4 of the remarks on Article 4; see also Articles 5 and 6 ATMF). Concentrating and internationalising technical rail supervision, of which technical admission is a part, would allow the undertaking

of significant rationalisation measures within the state administrations and, consequently, a reduction of costs.

10. Only a central authority can effectively ensure compliance with the legal systems adopted and put into effect at international level; OTIF will constitute this authority, since it is OTIF which is preparing these legal systems (§ 1, letter e). This does not mean that OTIF is an international inspection body or an international supervisory authority with power to issue instructions (Report on the 5th General Assembly, p. 28/29).

11. The development, including that within the Organisation, of provisions, rules and procedures in accordance with legal, economic and technical changes (§ 1, letter f) constitutes a clear objective.

12. § 2 opens up the possibility of devising other instruments or international conventions within the framework of OTIF. This avoids the need to amend the Convention in the event of it proving appropriate for other legal areas relating to international rail traffic to be regulated in a uniform manner at international level.

13. § 2, letter a) provides for the possibility of creating other systems of uniform law in the form of appendices. It seems advisable that such appendices should become an integral part of the Convention (Article 6, § 1, letter h).

14. It is not merely a matter of adding new appendices to the Convention, as the case may be, but also of creating a working platform for the devising of new, separate conventions with a substantive association with COTIF. One could imagine, for example, a convention concerning liability for damage sustained by third parties in connection with international rail traffic, following the example of that which exists for civil aviation, namely, the Rome Convention of 1952 (Report on the 10th session, p. 23 ; Report on the 13th session, p. 18). As with other areas of activity, one could envisage the devising of an international convention on the distraint of rail vehicles, following the example of the Brussels Convention of 1952 for the unification of certain rules relating to the arrest of sea-going ships, and a convention relating to international securities and guarantees in respect of railway stock financed by third parties.

Article 3
International cooperation

1. In the medium or long term, OTIF must become the only intergovernmental organisation within which the Member States deal with the questions and problems which arise at state level in connection with international rail traffic, following the example of the ICAO and IMO. Within the geographical area of the member States of OTIF there is currently a multitude of intergovernmental and non-governmental international organisations whose powers and activities overlap to some extent. In order to increase the effectiveness of international cooperation, the Member States undertake, in principle, to concentrate their international cooperation within OTIF, insofar as this is consistent with the tasks assigned to OTIF in accordance with Article 2. With regard to other matters, to avoid repetition, reference is made to the Explanatory Re-

port on the 1999 Protocol. § 1 does not indicate either an obligation or powers to deal with questions of commercial cooperation between the railways within the framework of OTIF.

2. The existing international conventions, of both the States and the railways, concerning international rail traffic and cooperation in this domain, must be examined and adapted to the new situation and to the objectives of OTIF (including concentration of cooperation within OTIF, taking into consideration the separation of state tasks from those of the actual rail companies).

3. The tasks and powers of the EC are not affected (§ 2). In any case, the obligations of the Member States of OTIF which ensue from their capacity as a member of the EC or as a state which is party to the EEA Agreement prevail over the obligations arising from § 1.

4. In its 22nd session (1 - 4.2.1999), the Revision Committee decided to transfer the article concerning international cooperation from the draft Amendment Protocol to the actual Convention, in order to include also those states which will become Member States of OTIF after the Amendment Protocol has come into force (Report, p. 10/11).

Article 4
Taking on and transfer of attributions

1. § 1 must be viewed in the light of the fundamental objective of the 1999 Protocol and the revised COTIF (Articles 2 and 3): to increase the effectiveness and to concentrate the international co-operation of the States in railway matters. The assumption of powers by OTIF and transfer of powers to OTIF are subject to a decision of the General Assembly, i.e., of the Member States, a majority of two-thirds being required in accordance with Article 14, § 6.

2. With regard to the assumption of attributions (and, if necessary, of the associated resources and obligations), it is a matter only of the assumption of attributions which, according to Article 2, are consistent with the objectives of OTIF and are based on international agreements or arrangements, i.e., tasks which have hitherto been entrusted to other intergovernmental organisations. A transfer of attributions cannot be “forced”, but necessitates appropriate agreements between the Member States of these organisations (Report on the 10th session, p. 25/26 ; Report on the 13th session, pp. 19-22 ; Report on the 19th session, p. 8).

3. The 5th General Assembly has decided to regulate not only the dissolution of the Organisation and the transfer of its remaining competencies to other intergovernmental organisations (Article 43), but also the possibility of transferring special competencies in order to achieve flexibility in the execution in internal rail matters without the necessity of dissolving the entire Organisation in order to achieve this (§ 2).

4. § 3 is intended to permit the assumption of responsibility for the administrative tasks of certain Member States in international rail traffic matters. This could be of particular relevance to certain Member States, particularly with regard

to technical rail supervision, if the conversion of the state railways concerned into private-law companies necessitated the creation of a state rail supervisory authority which would perform the state functions previously entrusted to the state railways included in the state administration. Such was the situation, for example, in the case of the Federal Republic of Germany, on the creation of the Deutsche Bahn AG and the Federal Railways Office ("Eisenbahn-Bundesamt") as a rail supervisory authority (1.1.1994). Switzerland has also adopted this concept, as from 1 January 1999. See also No. 9 of the remarks concerning Article 2.

5. § 3 also opens the way for the creation of an internationalised rail administration in certain areas which lend themselves to such an administration, for example the administration of a register of rail stock financed by third parties or technical rail supervision. It will not be a question of creating a supra-national organisation such as the EC, but of revocably transferring certain powers of Member States to OTIF. The associated administrative costs would have to be borne by the Member States concerned.

Article 5
Special obligations of the Member States

1. §§ 1 and 2 are modelled on Articles 22, 23 and 37 of the Chicago Convention of 1944 on the creation of the ICAO. They provide for particular obligations on the part of the Member States under international public law, namely, to adopt all appropriate measures for the purpose of facilitating and accelerating international rail traffic. The introductory sentence in § 1 sets out this obligation in general terms. Letters a) to c) give substance to this general obligation in certain matters. § 2 includes the obligation of actively contributing to regularisation and standardisation in all major matters relating to international rail traffic.

2. § 4 as provided in the Central Office draft of 30 August 1996 was intended not only to oblige certain Member States to comply with the technical standards and prescriptions of Appendix F and its Annexes in the Technical Admission of Railway Material intended for use in international traffic, but also to develop technical standards and prescriptions which are applicable to railway material exclusively within the framework of OTIF. This proposal was rejected by the Revision Committee (Report on the 13th session, p. 26). Nevertheless, for those States which are party to Appendices F and G to the Convention (Contracting States), the obligation to base the approval of railway vehicles and other railway material on certain technical standards and uniform technical prescriptions now ensues, in part, directly from those Appendices.

3. § 3 was introduced upon proposal by France (Report on the 10th session, p. 32/33). This is not a provision of mandatory nature. Rather, it is intended to support efforts seeking to facilitate access to the infrastructure.

Article 6
Uniform rules

1. Article 6 is modelled on Article 3 of COTIF 1980. It contains a list of the uniform legal systems which, in future, are to be binding in matters of international rail traffic (§ 1), unless there are reservations against certain legal systems in their entirety (see Article 42, § 1, first sentence). The content of the different legal systems in indicated in the respective Appendice.

2. §§ 2 and 3 of Article 3 of COTIF 1980 cannot be retained as they are, since the current system of registered lines and resulting obligations for the States and the companies is not retained (see also No. 1 of the remarks relating to Article 24).

3. § 2, like Article 3, § 4 of COTIF 1980, states that the Appendices constitute an integral part of the Convention.

Article 7
Definition of the expression of "Convention"

Article 7 corresponds to Article 4 of COTIF 1980.

Title II

Common Provisions

Preliminary remarks

In its 16th session (23 - 27.3.1998), the Revision Committee decided, in principle, to introduce into the actual Convention, in the form of common provisions, the identical provisions of the Appendices to the Convention (Report, pp. 7, 12 and 15). Consequently, the provisions relating to the applicable national law, the unit of account, the supplementary provisions, the security for costs, the execution of judgements and the attachment are included in Articles 8 to 12 of COTIF (Report on the 19th session, pp. 13-17).

Article 8
National law

1. § 1 was constituted following the example of Article 3 of the Hamburg Rules. It sets out a principle of interpretation which is generally recognised in jurisprudence and doctrine. This provision states that the interpretation and uniform application of the Convention, i.e., also of the Uniform Rules attached to the Convention in the form of Appendices, take precedence over the national legal concepts.

2. The term "national law" includes the laws, regulations, ministerial orders and, if applicable, also the tariffs.

3. The law of the State in which a legal action is taken is deemed to be the national law (lex fori). Article 8, however, does not refer directly to the substantive law of the State in which the legal action is taken, but includes the rules which are applicable in that State concerning conflict of laws (global reference).

4. The Union law applicable to the Member States of the EC constitutes part of the respective national law and is thus also covered by Article 8.

Article 9
Unit of account

1. Apart from minor editorial amendments, this provision has been taken as it stands from Article 6 of the CIV Uniform Rules 1980 and Article 7 of the CIM Uniform Rules 1980. § 5 concerning the obligation on the part of the railways to publish the rates has not been reincluded. Instead, a new § 6 has been introduced concerning the conversion of the unit of account into national currency (Report on the 16th session, pp. 13-15).

2. There are good reasons for making provision for the same unit of account as that provided for by the comparable conventions (CMR, Warsaw Convention, etc.).

3. At its 24th session, the Revision Committee simplified the wording of this Article; see the additional parts of the Explanatory Report below.

Article 10
Supplementary provisions

1. With regard to the supplementary provisions, the Central Office draft of the CIM Uniform Rules of 5 May 1995 had been limited to making provision for the *state* supplementary provisions. In its 5th session (17 - 21.6.1996), the Revision Committee nevertheless decided, by a large majority, to mention also the supplementary provisions agreed between two or more carriers (Report, p. 12). What is important is that these supplementary provisions must not differ from the CIV Uniform Rules and CIM Uniform Rules. Consequently, the provisions can only be provisions relating to execution, which would have to be as uniform as possible in all Member States and for all carriers; otherwise, the legal unity created by the CIV Uniform Rules and CIM Uniform Rules could be jeopardised.

2. With regard to the legal nature of the supplementary railway provisions, see the 1979 Bulletin, pp 114, 119 ff.

Article 11
Security for costs

This provision corresponds to Article 18, § 4 of COTIF 1980; however, it has been extended to lawsuits within the scope of the CUV Uniform Rules and CUI Uniform Rules (Report on the 19th session, p. 17).

Article 12
Execution of judgements. Attachment

1. §§ 1 and 2 correspond to Article 18, § 1 of COTIF 1980. § 1 prohibits substantive review of the lawsuit, but not the assertion of ground for nullity within the framework of the formalities necessary for execution. § 2 excludes facilities granted by § 1, solely for judgments which are only provisionally enforceable and judgements relating to fines for abusive practice (exemplary compensatory damages).

2. § 3 repeats Article 18, § 2 of COTIF 1980 and deals with claims arising from international contract of carriages. This provision maintains the protection of such claims against attachment although the situation has changed in respect of the removal of the obligation to carry (see No. 5 of the General Points remarks concerning the CIM Uniform Rules and the remarks concerning Article 10 CIM). The Revision Committee rejected a solution facilitating attachment in the State upon whose territory the rolling stock is located (Report on the 11th session, p. 33/34; Report on the 14th session, pp. 54-58; Report on the 19th session, p. 74; Report on the 21st session, pp. 46-49). The 5th General Assembly has also rejected a proposal to remove this proposal (Report, p. 34/35).

3. § 4 extends the regulation, hitherto applicable only to claims arising from international contract of carriages, to claims arising from contracts of use of vehicles in accordance with the CUV Uniform Rules and contracts of use of infrastructure in accordance with the CUI Uniform Rules (Report on the 14th session, pp. 52-57).

Title III

Structure and Functioning

Article 13
Organs

1. Article 13, § 1 corresponds to Article 5 of COTIF 1980. Due to the broadening of OTIF's functions (see, in particular, No. 8 of remarks relating to Article 2), two additional bodies have been created, the Rail Facilitation Committee (§ 1, letter e) and the Committee of Technical Experts (§ 1, letter f) ; the powers of these Committees are determined in Articles 19 and 20.

2. Following the example of international public law practice (cf. the specialist organisations of the United Nations system - UNO - organisations specialising in transport matters, such as the ICAO and the IMO, as well as, e.g., the IAEA - the International Atomic Energy Agency, the CCNR, the Danube Commission and others), provision is made in future for a "Secretary General" as the executive body of OTIF (letter g). The functions of the Secretary General correspond, to a large extent, to those of the current Central Office (for more details, see the remarks relating to Article 21).

3. The Central Office, which currently still administers the Secretariat of OTIF under the leadership of the Director General, is not maintained as a permanent body of OTIF, in parallel to the executive body, the "Secretary General" (Report on the

14th session, p. 11/12). The Central Office draft of 30 August 1996 had still made provision for a "Secretary General" as a management executive body *and* for the "Central Office" having responsibility for administrative tasks. Neither had Guideline No. 6 of the 4th General Assembly (8 - 11.9.1997) excluded such a "parallelism". The Revision Committee, however, did not support this guideline (Report on the 14th session, p. 11/12).

4. In order to avoid the need to amend the Convention in the event of it proving judicious to establish other commissions as bodies of OTIF, § 2 assigns general powers in this matter to the General Assembly. The Revision Committee, however, has decided to limit the powers of the General Assembly to the establishment of temporary commissions (Report on the 19th session, p. 20).

5. The Member States which have expressed a reservation or have made a declaration in accordance with Article 42, § 1, first sentence, are not members of the Committee having competence in this matter. On the other hand, such States remain members of the General Assembly, but (in the cases mentioned) do not have the right to vote (Article 14, § 5) and are not included for the purpose of determining a quorum (§ 3). In the case of the Committees, they are already excluded for the purpose of determination of a quorum due to the fact that they are not members of the corresponding Committee.

6. § 4 takes account of an equitable geographical distribution of the main functions within the Organisation (Report on the 21st session, p. 18/19).

Article 14
General Assembly

1. Article 14 follows the model of Article 6 of COTIF 1980. The list of powers of the General Assembly has been widened to matters newly included in COTIF which could necessitate a decision (§ 1, letters f) to k) and n) to p).

2. The current five-year interval for the holding of a General Assembly needlessly restricts OTIF's freedom of action, since the alternative (upon the proposal of one third of the member States) currently requires a co-ordinated initiative on the part of at least 13 Member States. A three-year interval (§ 3) is also the result of reducing to three years the mandate of the Administrative Committee, as provided for in Article 15, § 2, the composition of which is decided by the General Assembly (§ 1, letter b). The Revision Committee has made new provision for the possibility of convening the General Assembly upon the proposal of the Administrative Committee (Report on the 10th session, p. 43; Report on the 13th session, p. 43).

3. In view of the importance of the decisions that have to be taken by the General Assembly, the Revision Committee has retained the rule currently in force in respect of quorum required at the General Assembly (§ 4): the presence of the majority of the Member States is required (Article 6, § 4 COTIF 1980).

4. The Member States which have declared that they do not apply in their entirety certain Appendices to the Convention (Article 42, § 1) remain members of the General

Assembly even if the latter adopts amendments to Appendices to the Convention to which such Member States are not party. In these cases (Article 13, § 3), they are not included for the purpose of determination of a quorum (§ 4) and, consequently, they do not have the right to vote (see No. 5 of the remarks relating to Article 13).

5. The regulation of representation by another Member State is problematic. The Rules of Procedure of the General Assembly indicate clearly that the requirements in respect of the negotiating capabilities of the different delegations are very stringent. The 5th General Assembly has indeed retained the possibility of representation by another State, but it has limited this possibility to the extent that, in future, one State will no longer be able to represent more then one other State, as is already provided for in respect of the Administrative Committee (Article 15, § 6, second sentence), (Report, pp. 35-37).

6. Where necessary, with regard to the taking of decisions by the General Assembly, the two-thirds majority has been extended to other important matters (§ 6, letters f), g), h) and p).

Article 15
Administrative Committee

1. Article 15 corresponds to Article 7 of COTIF 1980. In view of the possible increase in the number of Member States (e.g. the accession of states from the former Soviet Union), the number of members of the Administrative Committee has not been fixed; it is altered according to the total number of Member States (§ 1). Consequently, and on the basis of the 39 current Member States, thirteen members would be appointed to the Committee (currently composed of 12 members).

2. The criterion of a geographically equitable distribution in determination of members for each period has been retained on the basis of the principle according to which a Member State cannot be part of the Committee for more than two consecutive complete periods (§ 4). The case of § 3 constitutes an exception to this rule.

3. When a seat on the Committee becomes vacant, it is no longer the Administrative Committee itself which appoints another Member State as a member of the Committee of the remainder of the period. In future, the General Assembly will appoint the members and the deputy members of the Committee. A specific deputy member will be appointed for each member. When a deputy member becomes a member of the Committee during a period, that member must in all cases be appointed by the General Assembly as a member of the Committee for the following period. This provision (§ 2) accords a much greater importance to the function of deputy member and could increase the interest of the Member States in being appointed as Deputy States (Report on the 21st session, pp 19-21). § 3 is also intended to reinforce the position of the Deputy States and to guarantee a permanent quorum within the Administrative Committee.

4. The list of powers of the Administrative Committee (§ 5) has also been adapted and broadened to include new matters to be handled by the Administrative Committee (letters e), g), k), q) and r).

5. Due to its importance, the provision concerning the quorum and the majority by which the Administrative Committee takes its decisions (§§ 6 and 7) has been transferred from its current Rules of Procedure to the actual body of the Convention. The simple majority provided for by § 7 guarantees that legally valid decisions can be taken in all cases.

6. § 8 repeats Article 7, § 3, indents 1 and 3 of COTIF 1980.

7. The hitherto mandatory provision, according to which the Administrative Committee holds two sessions per year, has been abandoned; it is required only that the Committee be convened once per year. A provision has been added according to which the Chairman convenes the Administrative Committee upon request by four of its members, but also upon a proposal by the Secretary General (§ 9, letter a).

8. The Revision Committee has decided against a proposal by Belgium seeking to institutionalise the Chairman of the Administrative Committee as an independent body. The Committee restricted itself to stating that the Chairman can deal only with urgent matters raised during the interval between sessions, as is the case at present (§ 9, letter c), (Report on the 13th session, pp. 54-57; Report on the 14th session, p. 6; Report on the 19th session, pp. 18/9 and 42-44).

Article 16
Other Committees

1. Article 16 corresponds to Article 8 of COTIF 1980. It combines all the provisions which are jointly applicable to the Committees as provided for in Article 13, § 1, letters c) to f). Since the participation of the Secretary General in the Committees § sessions is assumed, and that at the very most it would be a matter of regulating it in the Rules of Procedure of the Committees, Article 8, § 1, indent 2 of COTIF 1980 has not been reincluded.

2. § 4 of Article 8 of COTIF 1980 concerning the quorum has been included in Articles 17 to 20 concerning the different Committees.

3. Contrary to the General Assembly (see No. 5 of the remarks relating to Article 13), the Member States which have declared, in accordance with Article 42, § 1, first sentence, that they will not apply certain Appendices in their entirety are not members of the Revision Committee, the RID Expert Committee or the Committee of Technical Experts when these Committees deal with amendments to the Appendices concerned (Report on the 19th session, p. 45/46). In accordance with § 5, letter b), these States may nonetheless be invited to participate in the discussions as observers without voting rights.

4. The 5th General Assembly has not reincluded in respect of Article 16 the rule, applicable to the General Assembly and the Administrative Committee, according to which a member State can be represented by another Member State, but according to which a State cannot represent more than *one* other State (see No. 5 of the remarks relating to Article 14), (Report, pp. 35- 37).

5. The 5th General Assembly has refused to grant a right of participation to bodies which make an application for validation of a technical standard or a request for adoption of a uniform technical prescription (see Articles 5 and 6, APTU). The regulation contained in § 5 is sufficient. In the interest of efficient operation, the bodies concerned will obviously be invited to the sessions of the Committee of Technical Experts by the Secretary General. This was the practice followed in the past (see the participation of international professional organisations and associations in the work of the Revision Committee and the RID Expert Committee). Moreover, the details of participation by third-party bodies could be regulated within the Rules of Procedure of the Committee (Report, p. 37/38).

6. The wording of § 6 decided by the Revision Committee is based on practice as observed in past years in the Revision Committee. It could be interpreted as establishing the obligation to elect a chairman and deputy chairmen at the start of each session. For this reason the 5th General Assembly has decided, upon the proposal of Switzerland, to make provision whereby the chairmanship in one of the Committees can be entrusted to a Member State or to a particular deputy either for a period to be fixed at the time of election (for several years or sessions) or for an unlimited period. This is of particular importance to the Committee of Technical Experts, in order to guarantee efficient and continuous working. Moreover, the amended text takes account of the practice followed by the RID Expert Committee and by other international organisations (Report, p. 38/39).

Article 17
Revision Committee

A separate article, Article 17, is devoted to the Revision Committee, as is also the case with the other Committees. This article corresponds, in essence, to §§ 2 and 4 of Article 8 of COTIF 1980. The decision-making power is broadened to the new CUV Uniform Rules, CUI Uniform Rules, APTU Uniform Rules (without Annexes) and ATMF Uniform Rules, with the exception of the provisions mentioned in Article 33, § 4, letters d) and g).

Article 18
RID Expert Committee

A separate article is also provided for the RID Expert Committee. This article corresponds, in essence, to Article 8, §§ 2 and 4 of COTIF 1980. Notwithstanding the fact that the Annex to the Regulation concerning the International Carriage of Dangerous Goods by Rail (RID) will in future include major provisions of considerable significance (e.g., administrative inspections of dangerous goods, mutual administrative aid in the application of RID, safety adviser, transport restrictions on lines with special local risks, reports on accidents or incidents, cf. the initial draft of a new Appendix C, General Assembly document AG 4/3.3 of 1.7.1997), the Revision Committee opted for exclusive powers on the part of the RID Expert Committee with regard to the amendments to Appendix C (Report on the 19th session, p. 77). The 5th General Assembly supported this decision.

Article 19
Rail Facilitation Committee

1. The establishment of a Rail Facilitation Committee, particularly in respect of the crossing of frontiers, takes account of the decision adopted in the debate on the Facilrail project in the 3rd General Assembly of 16 November 1995: "... has recommended a solution which seeks to give a more solid institutional basis, within the framework of the in-depth revision of COTIF, to the removal of obstacles to the crossing of frontiers in international rail traffic" (No. 7.7 of the Final Document).

2. This decision was confirmed by the guidelines adopted by the 4th General Assembly (8 - 11.9.1997): "It is an objective of the Organisation ... to promote, improve and facilitate international rail traffic, particularly by contributing, as soon as possible, to removal of obstacles to the crossing of frontiers in international rail traffic ("rail facilitation") insofar as the causes of these obstacles come within the competence of the States (Guideline 1.2)."

3. Despite the impetus given by the Facilrail project (1991-1994), a broad range of tasks remains to be undertaken in this area which is of importance for the competitiveness of rail as a mode of transport.

4. The creation, purpose, functions and powers of this new OTIF body (§ 1) are based on Articles 22, 23 and 37 of the Chicago Convention of 1944, the practical work of the ICAO and the experience acquired in that work. The Committee which exists within the framework of the ICAO was also established for an unlimited period and was assigned extensive powers. According to Article 2, § 1, letter b), OTIF may only contribute to the removal of obstacles whose cause comes within the competence of the state (Report on the 4th General Assembly, pp. 17-20).

5. Despite the fact that the 4th General Assembly had decided not to provide for an Appendix to COTIF concerning a simplified customs procedure applicable to international rail goods traffic (Report, p. 20/21), Article 18 does not exclude the Committee from also examining customs questions. The Central Office draft of 30 August 1996 for a new COTIF had made provision for such an Appendix (see draft for an Appendix F of 15.3.1996 and General Assembly document AG 4/3.6 of 1.7.1997) and for a new Sub-Committee for customs matters, as a new OTIF body. With regard to the status of this matter at the time of the 5th General Assembly, see the 1998 Bulletin, p. 370).

6. With regard to the consideration of "special public interests", see No. 7 of the remarks relating to Article 2.

7. The quorum (§ 2) has been set at a lesser level, in order to guarantee the Committee's capacity to act. This is justified, since, unlike those of other Committees, the decisions of the Customs Facilitation Committee have no direct legal consequences.

Article 20
Committee of Technical Experts

1. The establishment of a Committee of Technical Experts, and the powers which have been assigned to it (§ 1), constitute an important opening for the future of OTIF. There is no sector other than the technical sector which has such a major need for harmonisation. Due to the considerable costs that would be involved in, for example, a uniform rail gauge or a uniform electric power supply for rail networks in all the Member States of OTIF, harmonisation is to be understood in the sense of the attainment of maximum compatibility and interoperability.

2. The 4th General Assembly of OTIF:

   - had noted that "technical harmonisation, in as wide a geographical scope as possible, is a fundamental task in enabling the rail sector to be capable of undertaking international transport without obstacles"

   - had considered that "for the devising of technical standards, it is essential to have recourse to the expertise and experience of the relevant organizations"

   - had instructed "the Central Office and Revision Committee to examine, in particular, and in collaboration with the other interested organisations, the problems of the validation of technical standards in the rail sector and of the technical admission of railway material used in international traffic, in order to present for the information of the General Assembly the solutions which are possible at international level".

3. Contrary to the solution adopted by the Revision Committee, the 5th General Assembly has decided that, with regard to the uniform technical prescriptions, the Committee of Technical Experts also may either adopt them or reject them, but may not in any circumstance amend them at the time of their adoption. The role of the Committee of Technical Experts is thus limited to analysing the content of the proposed standard or prescription (Report, pp. 41-44).

4. As decided by the Revision Committee (15th and 18th sessions), the grounds for the provision were as follows: the technical standards, within the meaning of the definition in Article 2, letter b) of the APTU Uniform Rules, are the result of a specific and very detailed procedure within the framework of, for example, the European Committee for Standardisation (CEN), the European Committee for Electrotechnical Standardisation (CENELEC) or the European Telecommunications Standardisation Institute (ETSI). The representatives of the Member States can participate in these procedures. It was not wished to give the Committee of Technical Experts the power to call into question, through amendment at the time of its validation, a technical standard ensuing from this procedure. The situation is not the same for the uniform technical prescriptions devised, without the participation of the Member States, by the rail company associations and the rail stock production industry. The supreme legislator, i.e., the Member States, should have the possibility of amending a technical prescription which has been devised by the said association and whose adoption as a uniform technical prescription is requested.

5. Nevertheless, the 5th General Assembly supported the viewpoint of France and Belgium, as well as of the European Commission and the UIC (Report, pp. 41-44). The Commission, however, is able to provide the petitioner with a negative opinion, as the case may be, so that the latter may devise a possible amendment to the proposal in accordance with the petitioner's own procedure.

6. In order to avoid repetition, reference is made to the Explanatory Report on the ATPU Uniform Rules (Appendix F to the Convention), particularly to Nos. 7 to 23 of the General Points.

7. At "one half of the Member States, within the meaning of Article 16, § 1", the quorum requirement for the Committee of Technical Experts is greater than that for the RID Expert Committee and the Rail Facilitation Committee, but slightly less than that for the General Assembly and the Revision Committee ("simple" majority).

8. The 5th General Assembly has clarified that, in the taking of decisions concerning provisions which do not apply to certain States due to the fact that they have expressed an objection in accordance with Article 35, § 4 of COTIF or have made a declaration, in accordance with Article 9, § 1 of the APTU Uniform Rules, the States in question do not have the right to vote (Report, p. 40/41)

Article 21
Secretary General

1. With regard to the creation of a "Secretary General" body, see Nos. 2 and 3 of the remarks relating to Article 13.

2. § 2 repeats the addition to Article 7, § 2, letter d) of COTIF 1980, as provided for by the 1990 Protocol, concerning the duration of the mandate of the Director General of the Central Office, but with the period reduced to *three* years. This corresponds to the three-year period provided for the Administrative Committee. The Secretary General may remain in post for a maximum period of nine years (Report on the 14th session, p. 14). The actual Convention does not refer to either the regulation of a post of "Vice Director General" or of "Deputy Secretary General" (Report on the 11th session, p. 12.13; Report on the 13th session, p. 31/32). The posts and grades are regulated in a staff regulation for the Organisation.

3. The functions of the Secretary General (§ 3) correspond, to a large extent, to the current powers of the Central Office. Newly introduced functions are those of the depositary of the Organisation (letter a) and the right to propose amendments to the Convention as provided for in § 4 (letter d), (Report on the 11th session, p. 10/11; Report on the 14th session, pp. 21-23), as well as the right to request the convening of the Administrative Committee (Report on the 19th session, pp. 21-23).

Article 22
Staff of the Organisation

The Central Office is not retained as an independent body of OTIF, in addition to the Secretary General (see No. 2 of the remarks relating to Article 13). Consequently, the position of

the Organisation's staff is regulated in general terms in a special article (Report on the 19th session, p. 24/25).

Article 23
Bulletin

1. The Organisation is under obligation to publish the Bulletin, but the body of the Organisation responsible for its publication is not specified. This appears reasonable, since neither the Administrative Committee nor the Secretary General, as bodies to be taken into consideration, are "editors" of the Bulletin. The Bulletin in question, as currently the case, is an official Bulletin, but which also contains other information which is necessary or useful in the application of the Convention. The Convention does not provide for a specific publication frequency for the Bulletin which, as the case may be, would allow it to be published at irregular intervals according to need. The required flexibility would thus necessarily be assured in the future.

2. In accordance with Article 21, § 3, letter m), the Secretary General must bring various communications to the notice of the Member States, the international organisations and associations and the companies. In the case of the current system of registered lines, the Central Office has available the name and address of all the rail companies involved in international rail traffic; this will no longer be the case in future. § 2 consequently creates the possibility of replacing the separate communications, which the Secretary General is obliged to promulgate, by a publication in the Bulletin.

Article 24
List of lines or services

1. The administration of the current system of registered lines, for the purpose of determination of the scope of application of the CIV Uniform Rules and CIM Uniform Rules, is not retained. In accordance with the decisions of the Revision Committee (Report on the 3rd session, pp. 3-9; Report on the 5th session, pp. 3-5) relating to Article 1 of the new CIV Uniform Rules and CIM Uniform Rules, these Uniform Rules are mandatory in respect of any contract of carriage of passengers or goods by rail when the place of departure and the destination are located in two different Member States. The obligation to carry has been removed. In addition, the system for administration of the "lists of lines", which is cumbersome and costly, becomes essentially superfluous with regard to railway lines (see Nos. 4 and 5). This is also a consequence of the separation between rail transport and infrastructure management, cases of which are increasing.

2. To apply the CIV Uniform Rules or CIM Uniform Rules to *complementary* transport performed by another mode of transport as *internal traffic* of the Member States, it is also no longer necessary for the corresponding lines to be registered, since the application of the CIV Uniform Rules and CIM Uniform Rules ensues directly from the contract of carriage. As long as the complementary transport does not involve the crossing of frontiers, there is no conflict with the international law regulating the

other modes of transport such as, for example, the Convention on the Contract for the International Carriage of Goods by Road (CMR).

3. This does not apply to the case of complementary maritime transport or to inland waterway transport, since this part of the transport is itself trans-frontier. This is why, in these cases, the application of the CIV Uniform Rules and the CIM Uniform Rules continues to be determined by the registration of such lines on the corresponding lists (see the decisions of the Revision Committee concerning Article 1, § 4 of CIV and Article 1, § 4 of CIM cited in No. 1, as well as No. 19 of the remarks relating to Article 1 CIM, General Assembly document AG 5/3.5 of 15.2.1999). These are taken into account in Article 24, §§ 1, 3 and 5. To this extent, the regulation corresponds to Article 10 of COTIF 1980. The retention of the system of registered lines for maritime trans-frontier complementary transport or for inland waterway transport is possible due to the fact, for example, that application of international maritime transport law is not mandatory, as is the case with the CIM Uniform Rules.

4. The Central Office draft of 30 August 1996 for a new COTIF had made provision, in Article 18, whereby lines which, in certain Member States, are not available to direct international traffic conducted on the basis of the CIV Uniform Rules or CIM Uniform Rules, could be registered in separate lists, known as negative lists. Such a provision would, in future, have enabled certain States to accede to COTIF if the application of the CIV Uniform Rules or CIM Uniform Rules to the whole of the rail network of the State concerned could not be considered for practical, economic or financial reasons.

5. The idea of a negative list had been approved in principle by the 4th General Assembly (8 - 11.9.1997) (see Guideline 7.2). In accordance with the suggestions of the Administrative Committee concerning the financing of the Organisation, the Revision Committee decided, for practical reasons, to replace this “negative list” by the possibility of making the scope of application of the CIV Uniform Rules and CIM Uniform Rules subject to reservation (Report on the 21st session, p. 17/18). This

reservation consists in registering on lists those railway lines on which international transport is conducted which is subject to the CIV Uniform Rules and CIM Uniform Rules (“positive list”). This possibility, however, is reserved for certain future Member States (see No. 8 of the remarks relating to Article 1 of CIV and No. 26 of the remarks relating to Article 1 of CIM).

Title IV

Finances

Preliminary remarks

1. The future regulations concerning the financing of the expenditure of the Organisation have constituted one of the most difficult questions, if not the most difficult, encountered in the preparatory work on the revision of COTIF. All the problems relating to this matter were discussed repeatedly in detail within the

various bodies of OTIF, namely, the Revision Committee (Report on the 10th session, pp. 47-51; Report on the 14th session, pp. 30-38; Report on the 21st session, pp. 2-18), the 4th General Assembly (Report, pp. 47-50; Guidelines, 7.1 to 7.3) and the Administrative Committee (Report on the 87th session, p. 30/31; Report on the 88th session, p. 7; Report on the 89th session, pp. 11-13; working group, supplemented by representatives of France and the Slovak Republic, on 13/14.8.1998 and extraordinary session, in the presence of representatives of France and the Slovak Republic, on 30.9.1998).

2. In its 21st session (19 - 23.10.1998), the Revision Committee finally adopted the recommendation of the Administrative Committee concerning the financing of the Organisation (Rev. Doc. 28/8 of 30.9.1998). This is compromise in respect of all questions relating to financing, based on the following values:

   - minimum contribution: 0,25 %

   - maximum contribution: 15 %

   - "economic power" ratio (UNO key): "length of network" : 40 : 60 (2/5 : 3/5).

3. The Fifth General Assembly rejected France's proposal to fix the "economic power" ratio (UNO key): "length of network" at 2/3 : 1/3 (Report, p. 45/46).

4. With regard to the transitional solution provided for by Article 6, § 7 of the 1999 Protocol, see the remarks on that article.

Article 25
Work Programme. Budget. Accounts. Management report

1. The introduction of a special article is considered to be useful in the interest of editorial simplification, the Revision Committee having decided to change to a biennial timetable in matters relating to the programme of work, the budget, the accounts and the management report (Report on the 19th session, pp. 21/22 and 39/40; Report on the 21st session, p. 33).

2. Notwithstanding the fact that provision has been made for publishing the Management Report on a biennial basis, there is nothing to prevent the Organisation from publishing an annual Management Report insofar as this is justified by the volume of work or the results achieved (Report on the 21st session, p. 33).

Article 26
Financing the expenditure

1. This article replaces Article 11 of COTIF 1980. The regulation on contributions, currently based solely on the length of the registered lines, does not take sufficient account of the very varied economic and traffic situations in the Member States or of the very wide variations between Member States in the amount of international rail traffic. For this reason, the Central Office has been repeatedly requested in the past to examine replacement solutions. This was done, but it was not possible to achieve a

consensus on any of the variants examined. Since, in future, the system of registered lines is to be abandoned, there is a need to create a new system.

2. The solution adopted by the Revision Committee represents a compromise in the form of a “package” (see preliminary remark on Title IV).

3. § 2 takes account of the special situation of the States which, for practical, economic and financial reasons, are not in a position to apply COTIF and its Appendices, particularly the CIM Uniform Rules, on their entire rail infrastructure. The possibility of making the CIV Uniform Rules and CIM Uniform Rules subject to reservation is limited to those States which will be members of COTIF in the version of the 1999 Protocol after it comes into force and in which the Convention concerning International Goods Traffic by Railway (SMGS) is applied (see No. 8 of the remarks relating to Article 1 of CIV and No. 26 of the remarks relating to Article 1 of CIM). For these States, it is not the total length of the rail infrastructures that is taken into account, but only the length of the infrastructures on which transport is undertaken in accordance with the CIV Uniform Rules and CIM Uniform Rules, plus the length of the registered maritime lines and inland waterways. The economic power (UNO key) is also only taken into account according to the ratio between the length of the lines on which CIV and CIM transport is undertaken and the total length of the rail infrastructures, plus the length of the maritime lines and inland waterways.

4. The possibility, provided for by Article 42, § 1, first sentence, of declaring certain Appendices to the Convention not to be applied in their entirety, will have the result that the Member States of OTIF, which will no longer derive the same benefits from OTIF, will no longer be affected in the same way by OTIF’s activities and, hence, its expenditures. For this reason, § 4 provides that the portion of expenditure arising from activities which benefit only some of the Member States will be borne by those States only, but according to the same formula as that provided for in § 1. The Administrative Committee is responsible for deciding on the allocation of the expenditure.

5. In order to ensure the liquidity of OTIF, the contributions for the current biennial period are due, in the form of a cash advance, payable in two instalments, by not later than 31 October of each budget year (§ 5). The cash advance is fixed on the basis of the final contribution due for the preceding year. With the exception of the biennial timetable, the new § 5 corresponds, essentially, to the current Article 12 of the Financing and Accounting Regulations.

6. § 6 corresponds, to a large extent, to Article 11, § 2, indent 1 of COTIF 1980.

7. § 7 corresponds to Article 11, § 2, indent 2 of COTIF 1980, but with the following amendment: the sums due bear interest from 1 January of the following year and the voting right of a debtor State is suspended for one year starting from the year for which it is under formal notice to pay.

8. §§ 8, 10 and 11 correspond, apart from some rewording, to Article 11, §§ 3, 5 and 6 of COTIF 1980. § 9 has been markedly simplified by comparison with Article 11, § 4 of COTIF 1980.

Article 27
Auditing of accounts

1. The additional mandate relating to the auditing of accounts, decided by the 2nd General Assembly (17 - 20.12.1990) (see 1990 Protocol), applied since 1 January 1994, has been incorporated as it stands in the actual Convention. The General Assembly, however, has the right to entrust the auditing of accounts to a State other than the Headquarters State (§ 1).

2. At its 24th session, the Revision Committee shortened the wording of this Article; see the additional parts of the Explanatory Report below.

Title V

Arbitration

Title V (Articles 28 to 32) concerning arbitration corresponds, to a large degree, to the current Title III (Articles 12 to 16) of COTIF 1980. Article 28, § 2 (current Article 12, § 2) has been simplified and extended to other lawsuits arising from the application or interpretation of other conventions devised within OTIF (see Article 2, § 2).

Title VI

Modification of the Convention

Title VI (Articles 33 to 35) corresponds - but with significant amendments - to Title V (Articles 19 to 21) of COTIF 1980.

Article 33
Competence

1. The General Assembly remains competent in respect of amendments to the actual Convention and its Appendices, unless possible amendments come expressly within the scope of competence of particular Committees (§ 2). In addition, it may continue to declare its competence in respect of amendments which are related to fundamental provisions (§ 3) (Report on the 11th session, p. 23).

2. A newly created possibility is that whereby one third of the States represented in the Revision Committee, the RID Expert Committee or the Committee of Technical Experts may require amendment proposals relating to the Appendices to the Convention to be submitted to the General Assembly for decision (Report on the 11th session, p. 22).

3. With regard to amendments subject to the simplified procedure, the Central Office draft of 30 August 1996 had made provision to extend the competence of the Revision Committee to all the provisions of the CIV Uniform Rules and CIM Uniform Rules, as well as to the new Appendices D (CUV Uniform Rules - vehicle law) and E (use of the infrastructure). The objective of this broadening of competence was to allow both the transport law and the two newly created Appendices to be more rapidly adapted to economic and legal changes. In addition, the Central Office draft had

provided that the decisions of the General Assembly should no longer be mandatorily subjected to a ratification procedure.

4. In the course of the deliberations of the Revision Committee, it became evident that, in view of the constitutional law of numerous Member States, it is not possible to achieve such an extensive simplification of the revision procedure, for either the Convention itself or the Appendices (Report on the 11th session, pp. 19-28). The provisions concerning the bases of liability, the burden of proof, the scope of application, compensatory damages, the limitation and extinguishment of rights and the place of jurisdiction have been excluded from simplified revision procedure (Report on the 19th session, p. 75/76; Report on the 21st session, pp. 36 - 38 and Report on the 5th General Assembly, pp. 48-51).

5. The Revision Committee, on the other hand, will be competent in respect of amendments to various provisions of the actual Convention, namely, Article 9 (unit of account) and Article 27 (auditing of accounts), with the exception of § 1 (transfer of the auditing of accounts from the Headquarters State to another State). This corresponds to the current legal situation.

6. With regard to the APTU Uniform Rules and ATMF Uniform Rules (Appendices F and G to the Convention), the Revision Committee, in its deliberations, retained the same principles (see No 4) as for the Uniform Rules mentioned in Nos. 3 and 4. The Committee of Technical Experts, on the other hand, will be competent in respect of amendments to the *Annexes* of the APTU Uniform Rules (§ 6).

7. The Revision Committee, and subsequently, the 5th General Assembly have decided that the RID Expert Committee shall be competent not only in respect of decisions relating to the Annex of Appendix C, but also in respect of proposed amendments to Appendix C proper (Report on the 19th session, p. 77; Report on the 20th session, First meeting, p. 7; in addition, the remark relating to Article 18, as well as Nos. 10-16 of the General Points relating to RID).

Article 34
Decisions of the General Assembly

1. Article 34 partially abandons the system according to Article 20, §§ 1 and 2 of COTIF 1980 applied previously. This amendment is justified by the experience with the COTIF of 9 May 1980, which did not come into force until 1 May 1985, and with the Protocol of 20 December 1990, which did not come into force until 1 November 1996. In the first case, almost five years elapsed between adoption and entry into force, and almost six years in the second case, due to the fact that the necessary number of ratifications, adoptions or approvals was not achievable within a shorter period.

2. The Central Office Draft of 30 August 1996 had provided for amendments to the Convention decided by the General Assembly coming into force automatically for States which did not declare opposition to the amendments prior to the expiry of a period set for their entry into force. Such an extensive simplification of the revision procedure in respect of the decisions of the General Assembly did not achieve the

necessary majority (Report on the 11th session, p. 23/24; Report on the 4th General Assembly, p. 58/59, Guideline 8.1; Report on the 14th session, pp. 67 B 69; Report on the 21st session, p. 41/42). A solution was finally adopted according to which the amendments to the Convention proper decided by the General Assembly come into force, for all Member States except those which have made a declaration to the effect that they do not approve the said amendments (§ 2), twelve months after their approval by two-thirds of the Member States. In the case of amendments to the Appendices decided by the General Assembly, approval by half of the Member States is sufficient. The period of twelve months remains unchanged (§ 3).

3. A newly introduced possibility is that whereby the General Assembly may specify, at the time of adoption of an amendment, that the amendment in question is of such a nature that those States which are unable to accept that amendment must leave the Organisation (§ 6). The legal consequence of the suspension of the application of the Uniform Rules, previously provided for by Article 20, § of COTIF 1980, has been retained insofar as the decisions of the General Assembly concern the Appendices to the Convention (§ 7). The purpose of these two legal consequences is to maintain legal unity in international rail traffic (Report on the 21st session, pp. 44-46). It is granted that this is not an ideal solution, but it has been possible to avoid legal uncertainty of the type that exists in international air traffic due to the different versions of the Warsaw Convention that are in force.

Article 35
Decisions of the Committees

1. Article 35 corresponds, in essence, to Article 21 of COTIF 1980. The period of twelve months for the entry into force of decisions adopted by the Revision Committee has been retained (Report on the 11th session, p. 26). On the other hand, the period for the entry into force of decisions adopted by the RID Expert Committee has been reduced to six months and thus has been adapted to the periods as provided by the European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR) (Report on the 11th session, p. 24/25; Report on the 4th General Assembly, p. 60, Guideline 8.5; Report on the 21st session, p. 43).

2. A paragraph § 6 has been added which prevents, for example, States which have declared a reservation against an Appendix in its entirety, or States which no longer have a right to vote because they have not fulfilled their payment obligations (Article 26, § 7), or States whose membership has been suspended in accordance with Article 40, § 4, from being able to influence the entry into force of decisions adopted by the Committees. The version decided by the Revision Committee has been revised and supplemented by the 5th General Assembly in the interest of legal clarity (Report, p. 53/54).

3. The 5th General Assembly has changed the legal consequence of the suspension of the application of Appendix F in its entirety in the case of objections against the validation of a technical standard or against the adoption of a uniform technical specification, insofar as only the application of this standard or of this specification is suspended (§ 4, third sentence) (Report, p. 53.54).

Title VII

Final provisions

Article 36
Depositary

1. Article 36 corresponds approximately to Article 26 of COTIF 1980. In future, however, the functions of Depositary are to be performed by the Organisation itself, i.e., by its executive body, the Secretary General. This is also the current practice in other international organisations (see also the remarks relating to Article 2 of the 1999 Protocol).

2. Instead of a detailed list of the functions of the Depositary, as provided by Article 26 of COTIF 1980, general reference is made to Part VII of the Vienna Convention of 23 May 1969 on Treaty Law (§ 1).

3. Experience in recent years has shown that, even within a relatively "apolitical" organisation such as OTIF, difficult legal questions can arise in connection with the role of Depositary. For this reason, § 2 provides for the possibility of regulating possible differences between a Member State and the Depositary.

Article 37
Accession to the Convention

1. Article 37 corresponds, to a large extent, to article 23 of COTIF 1980, but without differentiating between accessions after signature, but before the entry into force of the "new" Convention, i.e., the Convention amended by the 1999 Protocol, and accessions after its entry into force. Accessions prior to the entry into force of the 1999 Protocol and the amended Convention relate to COTIF 1980 and are governed by Article 23 of the latter. See also the remarks relating to Article 4 of the 1999 Protocol.

2. In principle, accession to COTIF and, consequently, to the Organisation, is open to each State on whose territory a railway infrastructureis managed (§ 1). It is not of importance that the State in question has its "own" railway. Nor shall the possibility of accession necessarily be linked to the existence of a direct rail link with the current Member States. It would be conceivable, and should be possible, for example, for Bangladesh, India and Pakistan to accede to COTIF even if currently there is no uninterrupted rail link between Pakistan and Iran (breach to the east of Zahedan) and thus to the west and the other Member States of OTIF. These three States could very well apply the CIV/CIM Uniform Rules, as well as the rest of the uniform law, in international rail traffic between their territories. The same could be true of other groups of States in North America, Latin America, Africa and Asia. See also Article 39 and the remarks relating to it.

3. OTIF could develop, following the example of the ICAO and the IMO, to become an intergovernmental organisation operating on a global scale. This could prove to be of even greater benefit and significance if OTIF becomes more involved in other le-

gal areas relating to international rail traffic in addition to carriage proper. Finally, the increase in international traffic in the intermodal transport sector, particularly in the carriage of dangerous goods, means that there is an ever-increasing need for the creation of a global-scale, uniform law that can be applied in trans-frontier rail traffic. To this end, OTIF could be the appropriate organisation. The International Union of Railways (UIC) is also a railway (company) association operating on a global scale.

4. §§ 2 to 5 correspond to §§ 2 and 3 of Article 23 of COTIF 1980, the conditions for the taking effect of an accession having been simplified (§ 3). The current double use, between "application for accession" and "depositing of an instrument of accession following expiry of an objection period" (Article 23, § 2, indent 4, COTIF 1980) has been abandoned.

Article 38
Accession of regional economic integration organisations

1. Some Member States have, in certain matters, transferred sovereignty rights (legislation and application) to the EC, which represents a regional economic community within the meaning of § 1. For this reason, it appears necessary to offer such a supranational organisation the possibility of acceding to OTIF. Such was the objective of Article 38, in the version decided by the Revision Committee (Report on the 14th session, p. 75/76; Report on the 19th session, p. 78). Its content was based on Article 22, paragraph 3 of the draft UNECE Convention on an International Customs Transit System for Goods Transported by Railway (document TRANS/WP.30/R.141). Upon the suggestion of the European Commission, taken up by Germany in the form of a proposal, the 5th General Assembly completely amended the text decided by the Revision Committee. Consequently, Article 38 provides for the possibility of accession by right instead of simple association (Report, pp. 52-54). On account of the future activities of OTIF in connection with the APTU Uniform Rules, the accession of the EC could prove advisable.

2. The conditions of an accession must be the subject of an agreement between the regional organisation and OTIF. The General Assembly is the body of OTIF which is competent to approve such an agreement (Article 14, § 2, letter n).

3. §§ 2 and 3 regulate the extent of the rights exercised by the regional organisation in place of the different member States, or by the Member States themselves. § 4 regulates the termination of membership. Regional organisations which have acceded are treated equally with the Member States.

4. The decision concerning a possible accession of the EC to OTIF does not come within the competence of the European Commission. Such a decision must be taken by the Member States of the European Community. Currently, the questions relating to an accession to international organisations operating in the area of transport or relating to accession as party to an international Convention have not been clearly resolved, from a political and legal standpoint, within the Community. Thus, the EC is party to the Geneva Agreement of 1958 (concerning the adoption of uniform technical prescriptions for wheeled vehicles, equipment and parts which can be fitted and

/ or used on a wheeled vehicle and the conditions of reciprocal recognition of approvals granted on the basis of these prescriptions); nevertheless, despite the fact of it having been proposed or requested by the Commission, the EC is still not a member of, for example, the CCNR or Eurocontrol. OTIF is free to propose to the EC that it accede, in the same way that the EC is free to accept or decline such an offer of accession (Article 238 of the EC Treaty; Report on the 21st session, pp. 50-52).

Article 39
Associate Members

1. The current COTIF provides for only one form of membership for States, namely, that with full rights and full obligations. The "obligations" include the application of the Appendices in international rail traffic between the Member States (COTIF 1980: CIV and CIM; COTIF in the terms of the 1999 Protocol: at least one of the Appendices, cf. Article 42, § 1). It is conceivable, however, that States could be interested in the work of OTIF without wishing initially to accept all the rights and all the obligations associated with an accession in accordance with Article 37. For this reason, it is judicious to make provision for a nuanced level of membership in the form of association, as provided, for example, by other international organisations and associations (European Conference of Ministers of Transport - CEMT, UIC). Such a participation, in the form of association, could facilitate the subsequent full accession of the State in question. States which would come into consideration would be, for example, the United States of America, the Russian Federation, India and other States whose railways undertake international transport.

2. § 2 regulates the obligation to pay contributions and limits certain rights of participation of the associate members.

Article 40
Suspension of membership

These provisions have their origin in a suggestion by the Central Office seeking to fill the gap between, on the one hand, rightful membership, with all its rights and obligations and, on the other hand, denunciation of the Convention (see Rev. Doc. 13/2.33a of 15.10.1997 and Report on the 14th session, pp. 76-78).

Article 41
Denunciation of the Convention

Article 41 corresponds to Article 25 of COTIF 1980. Due to the possibility of a State declaring non-application of certain Appendices in their entirety (Article 42, § 1, first sentence), provision of the possibility of also denouncing one or more Appendices was relinquished (Report on the 21st session, p. 55).

Article 42
Declarations and reservations to the Convention

1. § 1 admits two forms of reservations and declarations: firstly, reservations and declarations concerning the non-application of certain Appendices in their entirety and, secondly, reservations and declarations concerning the non-application of certain provisions of the Convention proper or of certain provisions of its Appendices. This latter possibility, however, is admitted only if such reservations and declarations are expressly provided for by the provisions themselves. To this extent, § 1 corresponds to Article 27 of COTIF 1980. The distinction between reservations and declarations is made according to the time at which they can be issued or made. Reservations can be issued at certain times only, whereas declarations can be made at any time.

2. The possibility of issuing reservations and making declarations in accordance with § 1, second sentence, concerning the non-application of certain provision is provided for by:

   - Article 28, § 3 of COTIF, concerning arbitration

   - Article 1, § 6 of the CIV Uniform Rules, for the States of the SMPS, concerning the application of the CIV Uniform Rules only to carriage on a part of the railway infrastructure located on their territory

   - Article 1, § 6 of the CIM Uniform Rules, for the States of the SMGS, concerning the application of the CIM Uniform Rules only to carriage on a part of the railway infrastructure located on their territory

   - Article 2 of the CIV Uniform Rules, concerning the non-application of any of the provisions of the CIV Uniform Rules relating to the carrier's liability in case of death of or personal injury to passengers who are nationals of the State which has made the declaration or whose usual place of residence is in that State

   - Article 2 of the CUI Uniform Rules, concerning the non-application of any of the provisions relating to the carrier's liability in case of bodily loss of damage when the event resulting in the injury occurs on the territory of the State which has made the declaration and the victim is a national of that State or has their usual place of residence in that State

   - Article 9 of the APTU Uniform rules, concerning the application of technical standards which have been validated and uniform technical prescriptions which have been adopted.

Article 43
Dissolution of the Organisation

1. Even if the question of dissolution is not one that arises at the present time, the Revision Committee has considered that it would be expedient to provide for a clear regulation on this matter, particularly in respect of the possible apportionment of assets,

taking into account the considerable differences in the participation of the Member States in the financing of the Organisation (Report on the Twenty-first session, p. 59).

2. The decision on a dissolution of the Organisation would have to be taken by the General Assembly, in accordance with Article 14, § 6, with a two-thirds majority. A possible transfer of the remaining attributions to another international organisation would have to be preceded by negotiations with that organisation, and with the Member States concerned. The details concerning the dissolution and possible transfer of remaining attributions, the time of entry into force of this decision, etc., should only be regulated by the General Assembly when the latter has decided upon the dissolution (Report on the 21st session, p. 60).

Article 44
Transitional provision

Article 44 provides that existing contracts concluded in accordance with the CIV, CIM, CUV and CUI Uniform Rules remain in the event of suspension of the application of these Uniform Rules (Article 34, § 7 and Article 35, § 4), in the event of denunciation of the Convention (Article 41) and in the event of declarations of non-application in their entirety of the relevant Appendices to the Convention (Article 42, § 1), subject to the law in force at the time of conclusion of the contract.

Article 45
Texts of the Convention

1. The proposed extension of the attributions and activities of OTIF, the continually increasing importance of English, including in international rail traffic, and the prospect of OTIF operating on a global scale have indicated the need not only to introduce English as a third working language of OTIF but also to draft the Convention in English (see also No. 5 of the remarks relating to Article 1).

2. At the 5th General Assembly, Germany and the Slovak Republic proposed abolishing the primacy of the French versions over the German and English versions in cases of differences (§ 1, second sentence). The following arguments were put forward:

   - international custom; in international Conventions drafted in several languages, primacy is not accorded to any language in the event of differences
   - the three linguistic versions are authentic texts
   - translation into other languages, e.g. Slovak, must be possible on the basis of each of the three linguistic versions
   - the original texts of the new Uniform Rules were drafted first in German; with regard to the French version, in the majority of cases these are translations
   - in the event of differences being ascertained, it is possible for the French version to be deemed authentic, even if it may be incorrect

The proposals only narrowly failed to achieve the necessary two-thirds majority (Report, pp 58/59 and 178).

3. The Central Office draft of 30 August 1996 had made provision for official translations of COTIF into the Arabic and Russian languages only and, for reasons of cost, had rejected official translations into Italian and Dutch (see No. 36.1 of the Explanatory Report, Annex IV to the circular letter of 30.8.1996, A 50-00517.96). With regard to the official texts, the Revision Committee decided, by a relatively small majority, to restrict itself initially to the working languages of the Organisation (Report on the 14th session, p. 78/79).

4. The question of translations was again raised in the context of the global solution relating to the financing of the Organisation's expenses (Report on the 21st session, p. 6). The Revision Committee and the 5th General Assembly have finally adopted the solution provided for in § 2. Insofar as a language is an official language on the territory of at least two Member States of the Organisation, the Member States concerned have an interest in having an identical official translation of the Convention. The bulk of the cost associated with the translation (the actual translation work) would have to be borne by the States concerned (Report on the 21st session, p. 58). At the present time, this compromise would be of significance for Belgium and the Netherlands (Dutch), Italy and Switzerland (Italian), Algeria, Iraq, the Lebanon, Morocco, Syria and Tunisia (Arabic) and for Sweden and Finland (Swedish). It could prove to be important for the Russian Federation and Belarus (Russian) if these two States were to accede to COTIF.

Additions to the Explanatory Report (Articles 9 and 27)

based on the decisions of the 24th session of the Revision Committee (Berne, 23-25.6.2009) and the 9th General Assembly (Berne, 9/10.9.2009)

NOTE: The general remarks and the remarks on individual provisions in this Explanatory Report contain a summary of the information in relation to the following points:

a) Background to and justification for the amendments that were submitted to the Revision Committee and adopted by it, and

b) Discussion on the provisions for the amendment of which the General Assembly is responsible in accordance with Article 33 § 2 and § 4 letter (a) of the Convention, including editorial amendments.

The information referred to in

a) has been examined and approved by the Revision Committee, together with the approved amendments and the General Assembly has noted them;

b) has been examined and approved by the General Assembly following the Revision Committee's considerations and recommendations in this respect.

General Points

1. According to Article 33 § 4 a) of the Convention, the Revision Committee is competent to take decisions about proposals aiming to modify Articles 9 and 27 §§ 2 to 10 of the Convention. In order to take account of developments in the use of the gold franc and in the role of the International Monetary Fund (IMF) and in order to comply with requests from the Auditor, the Secretary General has for a while felt compelled to propose to the Revision Committee amendments to provisions of both Articles. However, for reasons of economy, such proposals were deferred until further important modifications justified convening a meeting of the Revision Committee. This was the case with the revision process that had to take place in order to resolve problems of incompatibility with the law of the EC, of provisions in Appendices E, F and G of the Convention for the modification of which the Revision Committee is competent to a large extent.

2. At its 24th session, the Revision Committee adopted the amendments to Article 9 with the pertinent explanatory remarks as proposed by the Secretary General. With regard to Article 27 the Revision Committee decided not to delete §§ 3 to 10 of Article 27 and to integrate the entire content into the Finance and Accounts Rules as initially proposed by the Secretary General but to keep §§ 4, 7 and 9 of Article 27 in the Convention because of their fundamental importance. On the other hand it was decided to delete §§ 3, 5, 6, 8 and 10 of Article 27 and to renumber accordingly.

3. The 9th General Assembly (Berne, 9/10.9.2009) noted the results of the 24th session of the Revision Committee concerning the amendments to Articles 9 and 27 of the Convention and the Explanatory Report and approved the editorial amendment to the references contained in Article 14 § 6 and Article 33 § 4 a) of the Convention to read “Article 27 §§ 2 to 5”. It noted that these amendments are not decisions to which Article 34 of the Convention applies and instructed the Secretary General with regard to bringing these amendments into force to proceed in accordance with Article 35 of COTIF. It also authorised the Secretary General to summarise its decisions on the results of the Revision Committee in the general part of the Explanatory Report.

In particular

Title II

Common Provisions

Article 9
Unit of account

§ 4, which prescribed the gold franc as an alternative unit of account, was deleted. Like § 5, it referred to Member States of OTIF which are not members of the IMF.

2. Nowadays the IMF is a global organisation[3] with 185 members encompassing all OTIF Member States except Liechtenstein and Monaco.

3. However for Liechtenstein and Monaco, currencies of IMF members are valid. This means that § 4, which referred to an OTIF Member State not being a member of the IMF, whose legislation did not permit the application of § 2, i.e. to calculate the value of its national currency, in terms of the Special Drawing Right, in accordance with the method of valuation applied by the IMF, no longer referred either to Liechtenstein or to Monaco.

4. Thus § 4, which did not refer to any current or future OTIF Member State, has become irrelevant.

5. The current § 5, which has become § 4, was editorially amended in order to eliminate the reference to the elapsed deadline mentioned at the beginning and the reference to the deleted former § 4.

Title IV

Finances

Article 27
Auditing of accounts

In the context of the provisions in § 1, which comes within the competence of the General Assembly, the audit must be carried out in accordance with

- the rules of this Article, amendments to §§ 2 to 10 of which – according to Article 33 § 4 – come within the competence of the Revision Committee,

- any special instructions from the Administrative Committee and

- the Finance and Accounts Rules and

- the statutory provisions of the host state that apply to the Auditor's activities.

3 see http://www.imf.org/external/np/sec/memdir/members.htm

2. As the Auditor must comply with all the provisions referred to in the same way, the provisions must not be contradictory.

3. § 2 deals fundamentally with the tasks and activities, but it is hardly to be expected that there will frequently be a need to align with the requirements of the Administrative Committee or the host state.

4. §§ 3, 5, 6, 8 and 10 were deleted because they contained provisions on the specialist carrying out of the audit, for which there may be a need to make changes, but without justifying the Revision Committee's extensive involvement. These provisions were integrated into the Finance and Accounts Rules and will hence be subject to direct control by the Administrative Committee, which, as a rule, meets twice a year, but in any case considerably more often than the Revision Committee.

5. The new §§ 3 to 5 contain the provisions of former §§ 4, 7 and 9 of Article 27 which, because of their fundamental importance, remain in the Convention.

6. Due to the deletions and the renumbering in Article 27 the Article will no longer contain §§ 6 to 10, which has made the references in Articles 14 § 6 and 33 § 4 a) of the Convention partly redundant, so they had to be amended. The General Assembly is responsible for these Articles.

Protocol on the Privileges and Immunities of the Intergovernmental Organisation for International Carriage by Rail (OTIF)

Explanatory report [4]

General Points

1. It is customary, and in keeping with international practice, for the Member States of an intergovernmental organisation to undertake to grant the organisation, its personnel, the experts consulted by the organisation and the representative of the Member States the privileges and immunities that are necessary to perform their tasks within the framework of the organisation. This principle is stated in Article 1, § 4 of the Convention concerning International Carriage by Rail (COTIF) and specified in the Protocol on the Privileges and Immunities of the Organisation, which constitutes an integral part of the Convention. This corresponds to the approach adopted in the 1980 revision.

2. The purpose of the privileges and immunities is to maintain the essential relationship of trust between, on the one hand, the Member States and the Organisation and, on the other hand, between the Member States, by preventing a Member State from being able to influence the activity of the Organisation by exerting unwarranted pressure on the latter or from being able to derive undue financial advantage from the activities of the Organisation. The wording of Article 1, § 4 of COTIF and the provisions of the Protocol both clearly disclose the functional nature of the privileges and immunities.

3. Since, hitherto, the Privileges and Immunities Protocol has proved itself in practice, the Central Office has not suggested substantive amendments in this matter (Explanatory Report on the draft COTIF of 30.8.1996, No. 37). Only one Member State has submitted a proposed amendment to the Protocol (see the remarks relating to Article 1). The wording of the Privileges and Immunities Protocol has been re-edited and its structure reorganised. The articles have been provided with titles in order to facilitate reading of the Protocol.

4. Although, as far as privileges and immunities are concerned, it is the relations between the Organisation and the Headquarters State that assume the greatest importance, it is nevertheless necessary for the customary privileges and immunities to be granted to the Organisation and the members of its personnel when exercising their functions in other Member States, e.g. at conferences outside the headquarters State. This also applies to the representatives of the member States. Consequently, the Protocol regulates *in a general manner*, i.e., in relation to all the Member States, the

4 The articles, paragraphs, etc. which are not specifically designated are those of the Privileges and Immunities 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.

privileges and immunities of:

- the Organisation itself
- the representatives of the Member States
- the members of the Organisation's staff and the experts consulted by the Organisation

5. The special relations between both the Organisation and the members of its staff and the Headquarters State are to be regulated in the Headquarters Agreement, in accordance with Article 1, § 5 of COTIF [5]. Supplementary agreements may also be concluded, if need be, with other Member States, in accordance with Article 14 of the Protocol, for example on the occasion of conferences.

6. The 5th General Assembly has unanimously adopted, with amendments (Report, p. 180) the text adopted by the Revision Committee (Report on the 21st session, pp. 61-63).

In particular

Article 1
Immunity from jurisdiction, execution and seizure

The most important privilege of an intergovernmental organisation is the immunity from jurisdiction and the immunity from enforcement in the Member States. Upon proposal by Germany, the Revision Committee, in its 21st session (Report, pp. 61-62), enlarged the list of cases excluded ex lege. Excluded are not only civil proceedings instituted against the Organisation by a third party for damage caused by a vehicle belonging to or operated on behalf of the Organisation, but also civil proceedings generally. There are no likely resultant disadvantages for the Organisation.

Article 2
Safeguards against expropriation

Although this provision, hitherto included in Article 1, § 2, indent 2 of the Protocol, does allow expropriation for a public purpose, it obliges the Member State in question to take all appropriate measures to prevent this expropriation from constituting an obstacle to the exercising of the activities of the Organisation.

Article 3
Exemption from taxes

This article grants the Organisation the customary tax exemptions and corresponds to Article 1, § 3, indents 1 and 2, as well as to § 4 of the current Article 1.

5 Regulated by the agreement concluded between OTIF and the Swiss Federal Council, 10 February 1988, see http://www.admin.ch/ch/f/rs/i1/0.192.122.742.fr.pdf

Article 4
Exemption from duties and taxes

This article grants the customary exemptions from international import and export duties and charges and corresponds to the current Article 1, § 3, indent 3.

Article 5
Official activities

This provision emphasises the functional nature of the privileges and immunities. This is clarified by the additional text.

Article 6
Monetary transactions

For editorial reasons, monetary transactions and official communications have been dealt with in different articles. Hitherto, these two provisions were included in Article 2.

Article 7
Communications

This provision guarantees preferential treatment in respect of freedom of official communications. See also the remark relating to Article 6.

Article 8
Privileges and immunities of representatives of Member States

This article (current Article 3) covers the customary international immunities. Arrest and preventive detention, as well as the seizure of personal luggage, are nevertheless possible in cases of in flagrante delicto.

Article 9
Privileges and immunities of members of the staff of the Organisation

The privileges and immunities provided by this article (current Article 4) are granted to the members of the Organisation's staff by all the Member States, and not only by the Headquarters State.

Article 10
Privileges and immunities of experts

This provision (current Article 5) is limited by the fact that, in accordance with Article 13, a Member State is not obliged to grant the immunities provided for in letters a) and b) to its own nationals when these persons act in the capacity of expert to the Organisation.

Article 11
Purpose of the privileges and immunities accorded

In accordance with their functional nature, the privileges and immunities are granted solely for the purpose of maintaining, in all circumstances, the unimpeded functioning of the Or-

ganisation and the complete independence of the persons to whom they have been accorded (current Article 6). Also regulated at the same time is the question of which authority is competent to decide upon a possible withdrawal of the immunity.

Article 12
Prevention of abuse

The safeguard clause, in the interest of the public security of the Member States, had been introduced by the Revision Conference of 1980, upon proposal by France. This article (current Article 7) also obliges the Organisation to co-operate with the competent authorities of the Member States to prevent any abuse.

Article 13
Treatment of own nationals

In addition, the Member States are in any case obliged to grant to their own nationals and to the persons mentioned the following privileges and immunities:

- to the representatives of the Member States, inviolability of all official papers and documents

- to the members of the Organisation's staff, professional immunity and inviolability of all official papers and documents, as well as the fiscal exemptions provided by Article 9, letter d)

- to the experts consulted by the Organisation, professional immunity and inviolability of all official papers and documents.

Article 14
Complementary agreements

With regard to the usefulness of this possibility, see No. 5 of the General Points.

Uniform Rules concerning the Contract of International Carriage of Passengers by Rail (CIV)

Explanatory Report [6]

General Points

Background

See the remarks relating to the background to the CIM Uniform Rules

Preliminary work

1. Via its circular letter of 25 January 1996, the Central Office provided the Member States of the Intergovernmental Organisation for International Carriage by Rail (OTIF) and the interested international organisations and associations with the draft new Uniform Rules concerning the Contract of International Carriage of Passengers by Rail (CIV Uniform Rules), inviting them to make their opinion known to the Central Office. The draft was discussed on its first reading at the fifth session (17 - 21.6.1996) and 7th session (14 - 18.10.1996) and on its 2nd reading at the 17th session (6/7.5.1998) of the Revision Committee.

2. Due to the parallelism with the CIM Uniform Rules, at the second reading certain provisions relating to the transportation of luggage were left in abeyance by the Revision Committee until the corresponding provisions of the CIM Uniform Rules had been discussed, since the articles in question had to be discussed within the context of the second reading of the CIM Uniform Rules and the results of these discussions had to be included automatically in the CIV Uniform Rules (Report on the 17th session, 3rd meeting, p. 45). The decisions concerning the CIM Uniform Rules, adopted at the twentieth session (2.9.1998), were then incorporated into the CIV Uniform Rules by the Central Office, in accordance with the mandate of the Revision Committee.

3. Among the questions in abeyance, discussed at the 21st session (19 - 23.10.1998), concerning the basic Convention, there was also the question of the "system of financing / list of lines" which is directly related to the scope of application of the CIV Uniform Rules. A new provision was introduced into the CIV Uniform Rules in the course of this session, according to which each State which is party to a convention comparable to the CIV Uniform Rules may issue a reservation in respect of the scope of application of the CIV Uniform Rules (Article 1, §§ 6 and 7).

4. By analogy with the decision of the 21st session of the Revision Committee relating to Article 1, § of the CIM Uniform Rules (see No. 29 of the remarks relating to Article 1, CIM), Article 1 of the CIV Uniform Rules was also adapted. The 5th General Assembly (26.5. B 3.6.1999) still had to examine over 30 proposals or suggestions

6 The articles, paragraphs, etc. which are not specifically designated are those of the CIV Uniform Rules; unless otherwise evident from the context, the references to the reports on sessions not specifically identified relate to the sessions of the Revision Committee.

from States, international associations and organisations and from the Central Office. This resulted in substantive amendments in 9 articles (Report, pp. 85-88, 91-94, 99/100, 107-113 and 180/181).

Principles

5. The CIV Uniform Rules, as examined and adopted by the Revision Committee, in accordance with Article 8, § 2 letter b) of COTIF 1980, essentially follow the same principles as the text adopted for the CIM Uniform Rules:

- as a rule, application independent of a system of registered lines (but see No. 1.4 and No. 8 of the remarks relating to Article 1)

- contract of carriage as a consensual contract (see No. 2 of the remarks relating to Article 6)

- abandonment of the obligation to carry and of the tariff obligation (see No. 7 of the remarks relating to Article 1 and No. 3 of the remarks relating to Article 4), as well as a greater freedom for the contracting parties with regard to the composition of the contract of carriage

- system of liability generally unchanged, following the initial contemplation of the introduction of joint responsibility also in cases of death and injury of passengers (see remarks relating to Title IV, Chapter 1, No. 2, p. 89)

- the carrier also liable for damage caused by defects of the railway infrastructure (see Article 51).

For this reason, reference is made to the General Points relating to the CIM Uniform Rules.

Result

6. Some of the provisions which are included in the CIV Uniform Rules no longer appear in the new version. Some of these are provisions which were introduced into the basic Convention as provisions common to all the Appendices (national law, unit of account, supplementary provisions), while others are detailed regulations which have become superfluous in a rail transport market which has been largely liberalised, or provisions which have been deliberately abandoned so as to grant the contracting parties a greater contractual freedom (for example, certain provisions concerning registration and carriage of luggage, the condition, type, packaging and identification marking of luggage, refund, supplementary payments, etc.).

7. Unfortunately, it has to be noted that the degree of legal standardisation is not as high in the CIV Uniform Rules as in the CIM Uniform Rules. There are still numerous references to national law, particularly with regard to the carrier's liability in the case of death or injury of passengers. Since the living standards still vary considerably from one Member State to another, more extensive standardisation does not appear to be achievable at the present time.

8. One of the objectives of the revision was to harmonise the Uniform Rules with the law applicable to other modes of transport. Such a result has been achieved, partially, in the area of goods transportation: the new version of the CIM Uniform Rules is based, with regard to certain questions, on the Convention on the Contract for the International Carriage of Goods by Road (CMR) and the Hamburg Rules. The CIV Uniform Rules are also influenced indirectly by these international conventions, namely, the provisions concerning the carriage of luggage, these provisions actually being based on the new version of the CIM Uniform Rules. With regard to the rules concerning the carriage of passengers themselves, with the exception of the regulation of the legal status of the substitute carrier, in accordance with the Athens Convention of 1974, there has been no significant harmonisation with the law applicable to other modes of transport (see also No. 4 of the remarks relating to Title IV).

9. With regard to the requirement to devise rules that are more “client-friendly”, some progress has been noted (but see the remark relating to Article 49). One can cite, by way of example, the extension of the limits of liability (see Articles 30, 31, 41, 43 and 46), with the exception of the maximum amount of liability in cases of loss of or damage to vehicles transported in accompanied-vehicle trains (Article 45), the removal of “abnormal passenger behaviour” as ground for exoneration and the limitation of “behaviour of a third party” as ground for exoneration (see Article 26), the introduction of liability in case of failure to keep to the timetable (see Article 33), as well as a new provision extension of the carrier’s liability and obligations (see Article 5, last sentence.)

In particular

Title

Mention of luggage has been removed from the title of the CIV Uniform Rules. Title III deals with different supplementary transport services performed as part of the carriage of a passenger (hand luggage, animals, registered luggage, vehicles). The carriage of the actual passenger constitutes the principal service of the contract of carriage. The other transportation services mentioned are accessory services provided on the basis of the contract of carriage of passengers. These contractual services are specified in the new provision inserted in Article 6 (Article 6, § 1).

Title 1

General Points

Article 1
Scope

1. As also provided for in respect of the CIM Uniform Rules, the CIV Uniform Rules must be applicable to contracts of carriage by rail in international through traffic in general, independently of a system of registered lines. In this context, the following principles are applicable:

1.1 The passenger's place of departure and the destination must be located in different Member States. The CIV Uniform Rules are not automatically applicable to carriage in respect of which the place of departure and the destination are located in the same Member State which only uses the territory of another State for transit purposes (Article 2, § 1 CIV 1980) (see also No. 2 of the remarks relating to Article 4).

1.2 In the case of carriage *by road, by means of vehicles*, as supplement to carriage by rail, in order for the CIV Uniform Rules to be applicable (Art. 1, § 2) it is necessary that

- the carriage by rail is trans-frontier carriage
- the complementary carriage by road is exclusively internal carriage (cf. Article 2, § 2, indent 2 of COTIF in the terms of the 1990 Protocol).

1.3 In the case of carriage *by inland waterway*, as supplement to carriage by rail, it is necessary that

- the carriage by rail is trans-frontier carriage
- the carriage by inland waterway is inland traffic carriage, except in the case of carriage on a registered inland waterway line (see No. 1.4).

1.4 In the case of *carriage by sea or carriage by inland waterway on included lines* as supplement to carriage by rail (Article 1, § 3), it is possible for

- the carriage by rail to be inland traffic carriage and for the complementary carriage by sea or carriage by inland waterway to be trans-frontier carriage, or
- the carriage by rail to be trans-frontier and for the complementary carriage by sea to be trans-frontier or inland-traffic carriage by sea (e.g. coastal carriage)

1.5 In all the above-mentioned cases of complementary carriage, the application of the CIV Uniform Rules must be *imperative* when the carriages undertaken with different means of transport constitute the subject-matter of a *single* contract. The question of the applicable law cannot then constitute the subject-matter of a special agreement between the parties to the contract, since in each case it is a matter of trans-frontier carriage, the principal element of which is carriage by rail.

2. As a general rule, the subject-matter of the contract is the carriage of persons by rail undertaken *for reward*. The CIV Uniform Rules, however, must also be applicable to contractual carriage undertaken *free of charge*. Free carriage undertaken on the basis of other legal rights which do not constitute the subject-matter of a contract of carriage are not, however, subject to the CIV Uniform Rules (Report on the 17th session, 3rd meeting, p. 2).

3. International carriage on the basis of a single contract in accordance with the CIV Uniform Rules can also be documented in several tickets (Article 6, § 2). Some of these tickets can correspond to a transport service which is rendered in full on the territory of a single Member State (Report on the 17th session, 3rd meeting, pp. 2-4).

An addition proposed by France (Article 1, § 2 in the version adopted by the Revision Committee, General Assembly document AG 5/3.4 of 15.2.1999) was based on the provisions of the Warsaw Convention. This addition, however, was rejected by the 5th General Assembly (Report, p. 82/83), since it is feared that, in practice, it would result in legal uncertainty rather than in legal clarity.

4. With regard to the persons accompanying CIM consignments which, in general, do not travel on the basis of a contract of carriage of persons against reward but whose carriage constitutes an accessory service within the scope of a CIM contract, the regulations included in the CIV Uniform Rules of 1980 have been retained. Consequently, the carrier's liability in the event of death or injury of these persons continues to be regulated by the CIV Uniform Rules (Article 1, § 4).

5. Following the example of Article 2, § 2 CIV 1980 and of the carriage of goods (cf. Article 1, § 5 CIM Uniform Rules), carriage undertaken between stations located on the territory of border States are not subject to the Uniform Rules when the infrastructure of these stations is managed by an infrastructure manager, or possibly several infrastructure managers, coming under only one of these States (Article 1, § 5), e.g. Hamburg - Basle (DB AG station).

6. The carriage of clandestine passengers remains excluded from the scope of application of the CIV Uniform Rules. Their legal situation in relation to the carrier is regulated by the national law (Report on the 5th session, p. 5/6; 7th session, p. 2/3).

7. According to Article 1, § 2 of the CIV Uniform Rules 1980, the tariffs fix the services for which international tickets are issued. In accordance with the result of the deliberations on the CIM Uniform Rules, the tariff obligation has also been removed in respect of the carriage of passengers (including the carriage of luggage). In the case of separation between the management of the infrastructure and the provision of transport services, and also in the case of use being made of the right of access to the railway infrastructure, a single carrier, and not just a transport community of successive carriers, may in future conduct international carriage in accordance with the CIV Uniform Rules. When several subsequent carriers participate in the execution of the contract of carriage, continuation of the carriage and comparable conditions of carriage (e.g. in respect of the carriage of animals or road vehicles) must in future be guaranteed by means of a prior agreement concluded by the carriers participating in the contract of carriage. This could be done, for example, by means of carriers' uniform general conditions of carriage (international tariffs).

8. A solution has been sought, within the framework of the deliberations concerning the draft of a new basic Convention, which would allow those Member States which are financially weaker but in possession of a major rail network to exclude certain rail lines from the scope of application of the CIV Uniform Rules. This solution was aimed primarily at the new member States and the candidates for accession currently applying the Convention concerning International Passenger Traffic by Railway (SMPS) of 1 November 1951. The Revision Committee preferred the possibility of a reservation in respect of the scope of application of the CIV Uniform Rules (Report on the 21st session, p. 17/18) to the initially envisaged solution of a "negative list" of rail lines (Report on the 14th session, p. 25/26). Following this decision, new §§ 6

and 7 were introduced in Article 1. The railway lines of a State which has made a reservation in accordance with Article 1, § 6, are registered in the CIV list of railway lines, in accordance with Article 24, § 2 of COTIF.

Article 2
Declaration concerning liability in case of death of, or personal injury to, passengers

1. Article 2 of the Central Office draft, the wording of which is based on that of Article 3 of the CIV Uniform Rules 1980, was rejected by a small majority on the 1st reading. The reason for this decision was the wish to preclude, in future, different treatment of international carriage of passengers by rail according to their nationality (Report on the 5th session, p. 6). It has not been possible to judge the import of this decision other than in relation to Article 30, § 2 of this draft (see also Article 14, § 2 CUI). If, in future, a reservation concerning the liability in case of death of, or injury to passengers were no longer allowed, any maximum amount of lesser compensation provided for by national law would have to be increased, as necessary, in accordance with Article 30, § 2, in order to attain an amount of 175,000 units of account.

2. In the 2nd reading, the majority of delegates recognised that economic reasons justify the interest of certain Member States in retaining the possibility of declaring a reservation in respect of liability in case of death of, or injury to passengers and, consequently, a corresponding provision was adopted. Contrary to Article 3 of the CIV Uniform Rules 1980, there no longer has to be any restriction regarding the time at which such a reservation may be declared. The wording of this provision was adapted to that adopted at the 21st session for Article 42 of COTIF (Article 40 of the draft, “declaration” instead of “reservation”). This is because the declarations, on the part of a State, of non-application of certain provisions can be made *at any time* and not just at the time of signing of the Convention or at the time of deposition of the instrument of ratification, acceptance, approval or accession, and they are therefore not “reservations” according to the definition of the Vienna Convention on Treaty Law (Report on the 17th session 3rd meeting, p. 6/7, and 21st session, p. 56).

Article 3
Definitions

1. From the 1st reading of the draft CIV, proposals had been submitted which sought to adopt definitions for the new terms, such as carrier, subsequent carriers and substitute carriers (Report on the 5th session, p. 5). Since these are not terms used exclusively in the CIV Uniform Rules, the Revision Committee re-examined this idea several times. It also discussed the question of whether it might not be judicious to provide in the basic Convention uniform definitions for the terms used in the different Appendices (Report on the 18th session, p.7, and Report on the 19th session, p. 17/18). The Revision Committee finally opted for specific definitions in the different Appendices. The corresponding definitions were introduced into the CIM Uniform Rules in the 20th session (Report on the 3rd meeting, pp. 5-7), with automatic effect on the CIV Uniform Rules.

2. Letters a) to c), which define the terms “carrier”, “substitute carrier” and “General Conditions of Carriage”, have a wording which is identical to that of Article 3, letters

a) to c) of the CIM Uniform Rules (see the remarks relating to Article 3 CIM). Due to the adoption of these definitions and due to a definition of the term "vehicle" in the CIV Uniform Rules, it has been possible to simplify the wording of certain provisions.

3. The Fifth General Assembly completed the definition of the "substitute carrier" by inserting the words "performance of the carriage by rail". This prevents road transport companies which do not act as subsequent carriers from being considered as substitute carriers in the sense of Article 38. This is because the latter are independently liable and legal proceedings can be instituted against them in accordance with Article 55, § 6. Rather, such road transport companies are auxiliaries in the sense of Article 50 (Report, p. 66; also No. 22 of the remarks relating to Article 1 CIM and No. 3 of the remarks relating to Article 3 CIM).

Article 4
Derogations

1. § 1 allows derogations for carriage by means of shuttle trains between frontier stations, including the carriage in the Channel Tunnel. These derogations can be agreed in agreements between the Member States. The term adopted in the 1st reading, "the last establishment serving the carrier, located before the frontier and open to the public, for the performance of the contract of carriage", was replaced in the 2nd reading by the usual term "station", with the restriction that there must not be any other station between the station in question and the frontier. The Revision Committee rejected other derogations from the CIV Uniform Rules (e.g., for entire frontier zones, to be precisely delimited), so as not to create too many exceptions to the uniform transport law (Report on the 5th session, p. 8/9).

2. "Corridor traffic", e.g., on the Salzburg-Innsbruck line through the territory of Germany, does not fall within the scope of application of the CIV Uniform Rules. The wording in Article 1, § 1 (see No. 1.1 of the remarks relating to Article 1) renders an exception provision unnecessary.

3. As mentioned under General Points, the obligation to carry has been withdrawn in respect of the international carriage of passengers, as is the case for the international carriage of goods. Due to the different propensities that exist with regard to transport policy, it has been expressly provided, in respect of the carriage of passengers, that two or several States may provide for an obligation to carry in their bilateral traffic, insofar as this is not prohibited by other rules of international public law. This provision is not in itself constituent in nature, but it does serve the function of stating that it is not contrary to the CIV Uniform Rules to provide for an obligation to carry by means of an international agreement and to impose such an agreement on the rail carriers undertaking their activities on that territory.

4. The obligation on the part of the Member States to provide notification to the Secretariat of the Organisation, as provided for in § 4, was supplemented in the second reading by a corresponding obligation on the part of the Organisation, or the Secretary General: the other Member States and companies concerned must be informed of conventions in which derogations from the CIV Uniform Rules have been agreed.

On the other hand, the Revision Committee was not prepared to grant a body of the Organisation the right to verify whether the agreements concluded by the States were or were not in conformity with the CIV Uniform Rules (Report on the 17th session, 3rd meeting, p. 7/8).

Article 5
Mandatory law

As with the CIM Uniform Rules, the CIV Uniform Rules contain, in principle, mandatory law, unless it is evident from the actual wording of a provision that it relates to optional law. Notwithstanding that, the Revision Committee judged it expedient to introduce a provision in which this is expressly established. Its wording corresponds to Article 5 of the CIM Uniform Rules, which is itself based on Article 41 of the CMR and on Article 23, § 2 of the Hamburg Rules. The carrier may, in the interest of clients, extend his liability and obligations. An extension of liability does not necessarily consist only in a possible increase in the limits of liability; it can also, as the case may be, concern other elements, e.g., a renunciation of the grounds for relief from liability or it can relate to compensatory damages other than those provided for in the CIV Uniform Rules.

Title II

Conclusion and performance of the contract of carriage

Article 6
Contract of carriage

1. The contract of carriage according to the CIV Uniform Rules is conceived after the example of the contract of carriage according to the CIM Uniform Rules. The decision by the Revision Committee, taken at the 16th session, (Report, p. 16/17), to introduce into the CIM Uniform Rules a new provision defining the principal obligations of the carrier indicated the expediency of a corresponding adaptation of Article 6 of the CIV Uniform Rules. Consequently, an analogous provision, defining the principal obligations of the carrier in the carriage of passengers, was introduced into Article 6 of the CIV Uniform Rules in the form of a new § 1. Apart from the carriage of the actual passenger, mention is made only of the contractual obligation to carry luggage and vehicles, since these ancillary services constitute the subject-matter of a special agreement within the context of the contract of carriage. It is self-evident that the obligation on the part of the carrier to carry hand luggage and animals taken by the passenger is also the subject-matter of the contract of carriage.

2. The contract of carriage of passengers is conceived of - as is, in future, the contract of carriage of goods - as a *consensual contract*, the conclusion and content of this contract being proven - subject to contrary proof - by the ticket(s). Thus, the legal nature of this contract is comparable to that of contracts of carriage according to other international conventions relating to the carriage of passengers by different modes of transport (see Article 4, paragraph 2 of the Warsaw Convention, Articles 5 and 6 of the Convention on the Contract for the International Carriage of Passengers by Road - CVR). All that is required for the conclusion of the contract of carriage is the con-

cordant will of the parties to conclude a contract of international carriage of passengers. The absence of a valid ticket, however, may entail legal consequences according to Article 9. For this reason, the reservation “subject to Article 9” is necessary in § 2.

Article 7
Ticket

1. The regulation concerning the form and content of the ticket is designed to be flexible, so that it is applicable to the different types of ticket (e.g., subscriptions, Eurodomino tickets, InterRail tickets, etc.). It does, however, prescribe the minimum information content that is required, in view of the proof function of the ticket (see No. 2 of the remarks relating to Article 6) - including, amongst others, indication of the carrier or carriers. The remainder of the content, such as the form, language and characters to be used, may in future be regulated in the General Conditions of Carriage.

2. For practical reasons, the passenger’s obligation to ensure that the ticket has been made out in accordance with the passenger’s instructions has been retained (cf. Article 11, § 6 CIV 1980). However, the legal consequences of non-compliance with this provision depend on the actual case and are regulated by national law.

3. As in the case of the consignment note according to the CIM Uniform Rules, the ticket can be made out in the form of an electronic data record.

Article 8
Payment and refund of the carriage charge

1. § 1 stipulates, as a subsidiary and thus optional regulation, the principle according to which the transport charge is payable in advance. Its wording has been based on the new Article 11 of the CIM Uniform Rules.

2. The Revision Committee considered that a detailed regulation, as contained in Article 25 of the CIV Uniform Rules 1980, was superfluous. Nevertheless, it considered it appropriate to clarify that such regulations should be included in the General Conditions of Carriage (Report on the 5th session, p. 18).

Article 9
Right be carried. Exclusion from carriage

1. § 1 essentially replaces Article 12 of the CIV Uniform Rules 1980. However, with regard to regulations for the case of a passenger being unable to present a valid ticket in the case of an inspection, it refers to the General Conditions of Carriage. The necessary flexibility and contractual freedom are thus ensured. In the discussions within the Revision Committee, the need for greater flexibility was opposed by the interest of certain Member States in specifying that the supplement can only be

collected on a legal basis and that it can be refunded under certain conditions. This applies also to exclusion from carriage. The Revision Committee judged that a legal authorisation to regulate this question in the General Conditions of Carriage was sufficient.

2. If one compares this provision with Article 12 of the CIV Uniform Rules 1980, the position of the passenger appears to have been strengthened. The new wording is the result of detailed discussions in the 1st and 2nd readings (Report on the 5th session, pp. 18-20; 17th session 3rd meeting, pp. 13-15). It does state that the General Conditions of Carriage can provide for sanctions for non-compliance with an essential obligation on the part of the passenger, namely, the payment of the transport charge, and that the carrier may legally enforce his right to payment of the transport charge owed by the passenger, including, as the case may be, the supplement. In principle, however, it is still possible for the passenger subsequently to prove the existence of a contract of carriage and to obtain a refund of the transport charge, possibly paid twice by the passenger, and of the supplement, but only if such provision is contained in the General Conditions of Carriage. A restrictive regulation in the General Conditions of Carriage may avoid the risk of abuse by the passenger.

3. In the absence of regulations in the sense of letters a) to c) in the General Conditions of Carriage, the national law is applicable.

4. The regulation contained in § 1 clearly indicates the legal importance of the ticket as a means of proof (see Article 6). The legal consequences provided for in § 1 explain why Article 6, § 2 had to be restricted with regard to the terms according to which the absence or irregularity of the ticket does not affect either the existence or the validity of the contract of carriage.

5. Apart from the case mentioned in § 1, namely, that the passenger refuses immediate payment of the transport charge or the supplement (letter b), the ground for excluding a passenger from carriage are regulated in a more general manner in § 2 than is the case for the current regulation in Article 10 of the CIV Uniform Rules 1980 (jeopardising of safety, intolerable inconvenience to other passengers).

6. The provisions concerning persons who have fallen ill while travelling, and those affected by contagious illness, have not been included. These cases are subject to the national law.

Article 10
Completion of administrative formalities

This article repeats the provisions of Article 24 of the CIV Uniform Rules 1980 with regard to the actual passenger, while the passenger's obligations in respect of objects and animals conveyed while the passenger is being carried are to be regulated in future by Article 14. The passenger's liability in the event of non-compliance with the obligation stipulated in Article 10 is regulated by Article 53. At the 5th General Assembly, Belgium withdrew its proposal to remove this proposal (Report, p. 89/90).

Article 11
Cancellation and late running of trains. Missed connection

1. A provision corresponding to Article 16, § 1 of the CIV Uniform Rules 1980 was rejected by the Revision Committee. The obligation to continue the carriage already ensues from the general principles of the law on contracts (obligation to execute the contract). This is because the continuation of the carriage corresponds to a commercial interest on the part of the carrier.

2. On the other hand, it has not been possible to relinquish a provision according to which the carrier is obliged to certify, on the ticket if necessary, that the connection was missed or the train cancelled. This is because, in the absence of such a statement, it would be much more difficult, or even impossible, for the passenger to assert his rights against the carrier (Report on the 5th session, p. 24). With regard to the carrier's liability in the case of cancellation or delay of a train or of a missed connection, reference is made to Article 32.

Title III

Carriage of Hand Luggage, Animals, Registered Luggage and Vehicles

The current Chapters II, "Carriage of Registered Luggage" and III, "Provisions Applicable to the Carriage of both Passengers and Luggage" of the CIV Uniform Rules 1980 have been regrouped into a new Title III, "Carriage of Hand Luggage, Animals, Registered Luggage and Vehicles". In accordance with the plan and methodology approved in the 1st reading (Report on the 5th session, p. 25), Title III comprises a total of four chapters: "Common Provisions", "Hand Luggage and Animals", "Registered Luggage" and "Vehicles". In the 2nd reading, the Revision Committee examined the question of whether it was appropriate to group together the chapters "Registered Luggage" and "Vehicles". Indeed, it is only certain details concerning the carriage of vehicles that require regulations that differ from those applicable to registered luggage. Besides, the provisions relating to registered luggage are also applicable to vehicles (see Articles 25 and 47). It has been emphasised, however, that the carriage of vehicles is a sector of dynamic commercial activity which is undergoing continuous development and change, whereas in international traffic, the amount of carriage of registered luggage, in the conventional form of registration and carriage by train, is diminishing constantly. For this reason, the Revision Committee retained the distinction between the two ancillary services (Report on the 7th session, 3rd meeting, p. 17). This distinction may facilitate the application of the relevant provisions in practice.

Chapter I

Common Provisions

Article 12
Acceptable articles and animals

1. § 1 repeats only part of the regulation of Article 15, § 1 of the CIV Uniform Rules 1980. In future, the General Conditions of Carriage will be free to define the place where hand luggage must be deposited. Moreover, § 1, contrary to the common defi-

nition of the term hand luggage, allows cumbersome objects such as, for example, bicycles or windsurfing boards to be admitted for transportation as *hand-luggage*, in accordance with the special conditions contained in the General Conditions of Carriage. Contrary to Article 15, § 1 of the CIV Uniform Rules 1980, this provision does not state that the hand luggage is transported free of charge. The carrier is thus free to make, for example, the carriage of bicycles in passengers § vehicles subject to payment.

2. § 3 provides for the carriage of vehicles in relation to the carriage of passengers, in accordance with the provisions of the CIV Uniform Rules. Vehicles are deemed to be motor vehicles and trailers, the latter being able to be conveyed independently of the carriage of the towing vehicle (see Article 3, letter d).

3. Due to the removal of the obligation to carry in international rail traffic, no *prohibitions* on carriage have been established. The General Conditions of Carriage regulate admission for carriage and can consequently exclude the carriage of certain luggage. It is self-evident that the provisions of public law which prohibit a certain carriage or permit it only under certain conditions must be respected by both the passenger and the carrier. This is clearly indicated by Article 13. Due to its practical importance, it has been expressly stated in § 4 that dangerous goods could only be carried in accordance with the provisions of the Regulation concerning the International Carriage of Dangerous Goods by Rail (RID). A corresponding regulation, which is to be stated in the Annex of RID, is provided for in the new Appendix C (see Article 5 RID).

Article 13
Examination

1. The provision contained in § 1, essentially taken from Article 22, § 2 of the CIV Uniform Rules 1980 and adapted by the Revision Committee, is applicable to all objects and animals conveyed on the occasion of carriage of passengers, i.e., itis applicable not only to registered luggage, but also to hand luggage and vehicles, including their loads. The result of the deliberations within the Revision Committee represents a compromise between two opposing points of view: on the one hand, the assertion by the rail transport companies of a right, following the example of air carriers, authorising them to check transported objects at any time, without supplementary conditions and, on the other hand, the protection of the passenger, whose luggage cannot be inspected at any time without a reason (Report on the 5th session, p. 26/27). Consequently, a serious presumption of non-compliance with the Conditions of Carriage authorises the carrier to perform an inspection. The passenger’s liability is regulated by Article 53.

2. § 2 authorises, but does not oblige, the carrier to demand payment of the costs of inspection, as is the case in the current version.

Article 14
Completion of administrative formalities

This provision corresponds to Article 24 of the CIV Uniform Rules 1980. For reasons of methodology, the obligation for the actual passenger is regulated in Article 10. The passenger's liability for non-compliance with this obligation is regulated in Article 53.

Chapter II

Hand Luggage and Animals

Article 15
Supervision

For reasons of methodology, the obligation to supervise (Article 15, § 5 CIV 1980) has been introduced at this point. The passenger's liability in cases of non-compliance with this obligation (cf. Article 15, § 6 CIV 1980) is also regulated in Article 53.

Chapter III

Registered Luggage

Article 16
Consignment of registered luggage

1. § 1 indicates that the carriage of luggage is incidental to the contract of carriage of passengers and not the subject-matter of a separate contract.

2. Since Article 22 (§§ 1 and 4) provides for specific legal consequences when the holder of the luggage registration voucher is not party to the contract of carriage or when the luggage registration voucher is not rendered, it is necessary to formulate a proviso to § 2 with regard to the consequences, according to Article 22, in respect of the existence and validity of agreements relating to the carriage of luggage.

3. The provision concerning the probant force of the luggage registration voucher (§§ 3 and 4) is comparable to that of Article 4, paragraph 2 of the Warsaw Convention. The formulation, however, takes account of the wording of Article 6, § 3 of the CIV Uniform Rules and of that of Article 12 of the CIM Uniform Rules.

Article 17
Luggage registration voucher

1. This provision, § 2 of which - contrary to Article 20, § 4 of the CIV Uniform Rules 1980 - prescribes only the minimum content of the luggage registration voucher, is composed after the example of Article 7.

2. The statement of the carriers involved in the carriage (§ 2, letter a) is relevant to the status of being sued according to Article 56, particularly in the case of subsequent carriers.

3. § 2, letter b) corresponds to Article 7, § 1, letter p) of the CUM Uniform Rules as adopted, in accordance with the model of the CMR, by the Revision Committee. The passenger must thus be informed that carriage is in all cases subject to the CIV Uniform Rules.

4. The information provided for by § 2, letter c) must enable the luggage registration voucher to serve as proof of the part of the contract of carriage concerning the carriage of luggage.

Article 18
Registration and carriage

The wording, taken partially from Article 19 of the CIV Uniform Rules 1980, has been simplified considerably. As an incidental service within the scope of the contract of carriage of passengers, the carriage of luggage is, essentially, connected with the existence of a valid ticket. The carrier may, however, accept luggage independently of a contract of carriage of passengers. Such carriage is also subject to the CIV Uniform Rules, even if this is rather a matter of a particular form of express parcel carriage. Moreover, § 3 takes account of the fact that carriage of luggage in the same train as the passenger is less and less frequent.

Article 19
Payment of charges for the carriage of registered luggage

Following the example of the new Article 10, § 1 of the CIM Uniform Rules, only a subsidiary provision is made regarding the time of payment.

Article 20
Marking of registered luggage

This provision repeats, in an abridged version, the regulations of Article 21, § 2 of the CIV Uniform Rules 1980. Since there is no longer an obligation to carry, the wording of this provision has been amended accordingly: the regulation concerning the refusal to accept packages which are in a defective state or are improperly or insufficiently packaged (cf. Article 21, § 1 CIV 1980), or which do not have the prescribed identification marking, has been removed. The presumption that luggage was in good condition at the time of registration is given by Article 16, § 4.

Article 21
Right to dispose of registered luggage

Essentially, Article 23, § 5 of the CIV Uniform Rules 1980 has been reincluded, as a separate article, in an amended form which has been adapted to the other provisions of the CIV Uniform Rules. Since the most likely situation will be that in which the passenger demands the return of luggage to the place of dispatch, this article has been placed before the regulation concerning the delivery to the destination - contrary to Articles 18 and 19 of the CIM Uniform Rules, which are placed after the regulation concerning the delivery of the goods.

Article 22
Delivery

This article corresponds to Article 23 of the CIV Uniform Rules 1980, of which § 5 has, however, been amended and has become the new Article 21 (see remark relating to Article 21). The parties to the contract must be able to agree upon the transit period. This can also be achieved by the fact that the passenger notes and agrees to the General Conditions of Carriage.

Chapter IV

Vehicles

Article 23
Conditions of carriage

By way of supplement to the general provision of Article 12, according to which, in the carriage of passengers, vehicles may also be admitted for carriage in accordance with the CIV Uniform Rules, Article 23 specifies the particular conditions relating to this carriage which may be regulated in the special provisions of the General Conditions of Carriage.

Article 24
Carriage voucher

The provision concerning the carriage voucher for the carriage of vehicles was composed after the example of the provisions of Articles 1 and 17, which regulate similar transport documents; in this context, practical application is taken into account, insofar as this carriage voucher can constitute a part of the ticket.

Article 25
Applicable law

The regulation of Article 41, § 6 of the CIV Uniform Rules 1980, in the terms of the 1990 Protocol, has been retained subject to redrafting.

Title IV

Liability of the Carrier

Chapter I

Liability in case of Death of, or Personal Injury to, Passengers

1. As mentioned in the General Points, the system of liability remains essentially unchanged. It has only had to be adapted insofar as proved necessary for its application in circumstances in which the transport services are separate from the operation of the railway infrastructure. The prohibition on limiting of liability is regulated in general terms in Article 5.

2. In the deliberations on the draft, the introduction of a joint liability of subsequent carriers involved in the carriage, even in case of death of, or injury to passengers, had been envisaged. Two aspects were discussed: firstly, the advantage of better protection of the passenger as well as simpler and more rapid compensation in case of death of, or injury to passengers and, secondly, the need to protect the rail carrier against unquantifiable risks. Although, initially, a majority was seen to be in favour of the introduction of a joint liability even in case of death of, or injury to passengers (Report on the 5th session, p. 44/45), it was ultimately necessary to relinquish an amendment on the subject. It proved impossible to achieve a consensus regarding the terms and conditions of this joint liability. Questions which remained much debated were those concerning an additional standardisation of the counts of loss for which compensation is due, the determination of a maximum amount or the extent of reference to the national law (Report on the 7th session, pp. 3-6).

3. In consideration of the loss of value of the Special Drawing Right, it was decided, in principle, to increase all the limiting values (not just in the event of death or injury of passengers). This applies in particular to the minimum compensation in case of death of, or injury to passengers which is to be applied in cases where the national law, which is applicable in principle, provides for a lesser amount. A consensus has not been achieved hitherto for a more extensive standardisation of the law.

4. The second reading within the Revision Committee, during which reference was made to the revision, then taking place, of the Warsaw Convention as a possible model, again did not result in fundamental amendments to the current system of liability. In view of the differences that exist by comparison with air traffic, particularly the fact that rail traffic passengers are not registered, it was not imperative to copy the solutions envisaged in the revision of the Warsaw Convention (Report on the 17th session, 3rd meeting, p. 29/30).

Article 26
Basis of liability

1. The concept according to which a connection with the operation of the railway constitutes a condition for liability has remained unchanged in relation to the CIV Uniform Rules 1980. The Revision Committee examined the question of what is appropriately understood by operation of the railway in view of the new situation in numerous Member States in which, for example, the carrier does not use either his own rolling stock or his own infrastructure. With regard to the rolling stock, it was undisputed that this must be attributed to the operation of the railway and that carriers cannot refer to defects of the vehicles used for carriage to exonerate themselves from their liability. A provision specifying this was not considered necessary (Report on the 5th session, p. 43). With regard to the railway infrastructure, a corresponding provision is contained in Article 51. According to the latter, the manager of a railway infrastructure is considered to be an auxiliary of the rail carrier. This also corresponds to the concept adopted by the Revision Committee in respect of the CIM Uniform Rules. The term “operation of the railway” therefore includes not only the activities of the carrier but also - through the device of this legal fiction - the management of the infrastructure (Report on the 17th session, 3rd meeting, p. 25).

2. The expression “mental harm” also includes, for example, a shock. In order to make this clear, the term “integrité mentale” has been replaced by the term “intégrité psychique” in the French text (Report on the 17th session, 3rd meeting, p. 28).

3. In comparison with the Central Office draft, which is broadly based on the CIV Uniform Rules 1980, the grounds for exoneration (§ 2) have been adapted in two respects, in favour of the passenger. Firstly, non-habitual behaviour on the part of the passenger no longer represents absolute grounds for exoneration (cf. Article 26, § 2, letter b) CIV 1980) and, secondly, carriers cannot make reference to the behaviour of another company using the same infrastructure to exonerate themselves from liability. The relinquishment of “behaviour on his part not in conformity with the normal conduct of passengers” as grounds for exoneration was justified by the respect due to handicapped persons (Report on the 5th session, p. 42). The Revision Committee discussed in detail the question of whether the carrier should also be held liable as a result of other companies using the same infrastructure. The interests of victims was clearly the foremost of the considerations. The very general phrase chosen in the final wording also takes account of these interests: “another undertaking using the same railway infrastructure” does not necessarily have to be a rail *transport* undertaking. Following the example of his liability for damage caused by the infrastructure, the liable carrier can nevertheless recover his loss by asserting his right of recourse against this other undertaking. This provision, according to which an undertaking using the same infrastructure is not considered as a third party, has been introduced into the CIV Uniform Rules only; the Revision Committee clearly rejected such a regulation in the area of carriage of goods, on the grounds that it contradicts the principles of the law on contracts and the notion of unavoidable circumstances (Report on the 5th session, p. 41/42); Report on the 6th session, p. 16).

4. The 5th General Assembly rejected a proposal by Belgium (identical to a suggestion by the International Rail Transport Committee - CIT – and the International Union of Railways - UIC) which sought to regulate the conditions and the scope of the rights of recourse stated in Article 26, § 2, letter c) and in Article 32, § 2, letter c), since these questions come within the competence of national law. The CIV Uniform Rules only regulate the contractual relations between the carrier and the passenger. The recourse to national law given by Article 8 of COTIF is a general recourse, which also includes the rules relating to conflict of laws. The substantive standards of the national law of the other carrier are thus not necessarily applicable (Report, pp. 94-99).

5. § 5 specifies the carrier or, if applicable, the carriers bearing liability. Irrespective of the question of the liability of the substitute carrier with regard to registered luggage (Article 39), there is also provision for a liability on the part of the substitute carrier in case of death of, or injury to passengers. In view of the new definition of the scope of application of the CIV Uniform Rules (abandonment of the current system of lines), it has not been possible to refer to the “railway which operates the line” in the context of regulations concerning liability in case of death of, or injury to passengers. As well as the contractual carrier (i.e., the carrier who, by virtue of the contract, must render the service of transportation during which the accident occurred),

the substitute carrier (i.e., the carrier who actually performed the service of transportation during which the accident occurred) is also liable. Both are jointly liable.

6. With regard to joint liability in the case of joint operation, the right of option at the time of initiation of the lawsuit will be annulled, notwithstanding the joint liability of the contractual carrier and of the substitute carrier in case of death of, or injury to passengers, in accordance with Article 56, § 7, from the time at which the action is brought against one of the jointly operating carriers.

Article 27
Damages in case of death

1. This article corresponds, in content, to Article 27 of the CIV Uniform Rules 1980. Whereas Article 26 regulates liability in terms of substance, i.e., the question of *whether* the railway is responsible, Articles 27 to 29 regulate the question of the *counts of loss* for which compensatory damages must be paid.

2. § 2 grants a right to compensatory *damages*, but not a right to alimony. This is of import in determination of the applicable national law.

Article 28
Damages in case of personal injury

This article corresponds, in content, to Article 28 of the CIV Uniform Rules 1980. In the French text, the term “mental” has been replaced by “psychique” (“psychic”) in order to express clearly that psychic traumatisms - provided that there is a cause and effect relationship - can give rise to claims for compensatory damages (see No. 2 of the remarks relating to Article 26).

Article 29
Compensation for other bodily harm

This article corresponds, in content, to Article 29 of the CIV Uniform Rules 1980, its wording having been simplified. Whereas Articles 27 and 28 essentially concern bodily injury, Article 29 primarily concerns moral injury, particularly *pretium doloris*. As in the case of Article 29 of the CIV Uniform Rules 1980, which uses the wide-ranging term “other injuries” but also mentions these injuries by way of example, the new text also uses the term “other bodily harm”.

Article 30
Form and amount of damages in case of death or personal injury

1. This article corresponds, in content, to Article 30 of the CIV Uniform Rules 1980. The title, rightly, no longer refers to “limit” but to “amount” of compensatory damages. The amount fixed in § 2 does not include any limit of compensation, but determines a minimum amount for cases in which the applicable law provides for a maximum limit of compensatory damages and in which this amount is less than 175,000 units of account.

2. In determination of the minimum amount, the Revision Committee took as a basis the 1990 Amendment Protocol to the Athens Convention of 1974 (Report on the 7th session, p. 7).

Article 31
Other modes of transport

1. The concept, constituting the basis of the Central Office draft of 25 January 1996, of a uniform liability in rail transport law for carriage which, on the basis of a single contract of carriage, includes carriage by other means of transport, has not been retained in full. The Revision Committee accepted more severe liability, according to rail law, for that part of the carriage performed using other means of transport, but only in the case of substituted transportation (in the case of temporary interruption of the rail traffic) using these other means of transport (§ 3) (Report on the 7th session, pp. 8-11). From the passenger's point of view, this may be considered to be an advance in comparison with the CIV Uniform Rules of 1980.

2. On the other hand, in cases in which carriage by another means of transport was already agreed at the time of conclusion of the contract of carriage, the law which applies to the other mode of transport remains determinant (§1). This represents a system discontinuity within the CIV Uniform Rules, when supplementary carriage with other modes of transport constituting the subject-matter of a single contract is subject to the provisions of the CIV Uniform Rules, with the exception of the provision relating to liability, with liability being regulated by other legal systems. There is no comparable system discontinuity in the case of the CIM Uniform Rules.

3. With regard to rail vehicles transported by ferry-boat (§ 2), the regulation of the CIV Uniform Rules 1980 has also been reincluded (cf. Article 33 CIV 1980).

Chapter II

Liability in case of Failure to Keep to the Timetable

Article 32
Liability in case of cancellation, late running or missed connections

1. These counts of loss, which are of particular interest for the passenger, have been discussed for decades without success (see 1985 Bulletin, p. 66 ff.). Some railways have regulated this question on an internal basis, in consideration of possible complaints and claims by passengers, within the framework of the Utrecht Agreement, Appendix 2 to the Agreement on the International Carriage of Passengers and Luggage by Rail (AIV). The Utrecht Agreement, however, has not been published, and consequently few passengers are aware of its existence.

2. Article 32 attempts to create a right to compensation for damages caused by delays. In international civil aviation, this concept was fixed from the start in the Warsaw Convention (1929). In the case of Article 32, this is primarily only a first step towards legal liability; provision is made for an objective liability, with a restrictive list of the grounds for exoneration. On the other hand, compensatory damages are lim-

ited to the reasonable accommodation costs of the passenger and the reasonable costs incurred due to the notification of persons awaiting the passenger. Although self-evident, no express provision has been made for reimbursement of reservation costs when occupation of the reserved place has not been possible due to a delay, etc. The grounds for exoneration from liability (§ 2) have been worded following the example of Article 26. In this case, likewise, the carrier cannot release himself from liability by making reference to the behaviour of another undertaking using the same infrastructure. The carrier's right to recourse against such an undertaking, however, remains unaffected (see No. 2 of the remarks relating to Article 26).

3. From the customers § point of view, the minimum solution found remains unsatisfactory. Passenger traffic delays represent a typical case of improper performance of the contract of carriage. In numerous legal systems, improper performance of the contract justifies reduced remuneration, i.e., in our case, reduction of the transport charge.

4. The reservation regarding Article 44 serves to clarify the fact that the special provisions of this article are also mandatory in respect of the carriage of vehicles. The national law is applicable with regard to compensation for other possible losses (see also No. 4 of the remarks relating to Article 26).

Chapter III

Liability in respect of Hand Luggage, Animals, Registered Luggage and Vehicles

Section 1

Hand luggage and animals

Article 33
Liability

1. For reasons of methodology, the provisions concerning the carrier's liability for damage caused to objects on the person of the passenger, hand luggage and animals have been grouped together in Section 1. When such damages occur in connection with the death of, or injury to the passenger, the objective liability of the carrier, as provided for in Article 26, § 1, indent 2 of the CIV Uniform Rules 1980, remains applicable, the possible grounds for exoneration being retained. This provision has been incorporated in Article 33, with Article 26 having to be applied analogously (§ 1).

2. In the case of damages caused to articles on the person of the passenger, hand luggage and animals which is not connected with the death of, or injury to the passenger, the liability for fault is retained. In the new § 2, the regulation in respect of liability *for fault* has been taken from Articles 47, §§ 2 and 3 of the CIV Uniform Rules 1980.

Article 34
Limit of damages in case of loss of or damage to articles

1. Due to the new methodology (grouping together of the provisions relating to the carrier's liability for damage to articles on the person of the passenger and for hand luggage and animals, see remarks relating to Article 33), this provision, taken from Article 31 of the CIV Uniform Rules 1980 and adapted accordingly, has also been incorporated in this Section.

2. The maximum amount of liability, which had not been adapted or increased in 1989/90, has been doubled. This has not only compensated for the loss of actual value of the unit of account, but also effected a slight increase in the maximum amount (see No. 2 of the remarks relating to article 41).

Article 35
Exclusion of liability

The regulation of Article 24 of the CIV Uniform Rules 1980, self-evident in itself, has been reincluded.

Section 2

Registered luggage

Article 36
Basis of liability

Article 37
Burden of proof

The basis of liability, defined in Article 36, that can be applied to the carriage of luggage corresponds, to a large extent, to the basis of liability applicable to the carriage of goods (Article 23 CIM): § 1 defines the principle of objective liability for the listed counts of loss. They relate to the damages caused by the operation of the railway (i.e., transportation and "management" of the infrastructure). §§ 2 and 3 are to be read in connection with the burden of proof as provided for in Article 37. Whereas, in the case of the grounds for exoneration listed in § 2, the carrier must, for the purpose of exonerating himself, prove a causal connection between the pleaded grounds for exoneration and the damage incurred, it is sufficient for the carrier to establish the possibility of such a connection for the grounds listed in § 3 (preferential grounds for exoneration from liability).

Article 38
Successive carriers

The regulation corresponds to that of Article 26 of the CIM Uniform Rules.

Article 39
Substitute carrier

The wording repeats that of Article 27 of the CIM Uniform Rules, drafted according to the model of Article 10 of the Hamburg Rules. The term “substitute carrier” is defined in Article 3, letter b).

Article 40
Presumption of loss

This article repeats the regulation of Article 37 of the CIV Uniform Rules 1980.

Article 41
Compensation for loss

1. This regulation corresponds to Article 38 of the CIV Uniform Rules 1980.

2. In the 1989/90 revision, the maximum amount in case of loss, when the amount of damage is proven (Article 41, § 1, letter a), had been increased from 34 to 40 units of account per kilogram of missing gross weight and from 500 to 600 units of account per package. The Revision Committee, in the first reading, had already decided to double, in general, the maximum amounts of liability (Report on the 7th session, pp. 22-24). The 5th General Assembly has followed this decision and has fixed the maximum amounts at 80 units of account per kilogram or 1200 units of account per package, enabling a certain real increase in the maximum amount to be achieved (Report, p. 180).

3. The maximum amount in case of loss, when the amount of damage is not proven (Article 41, § 1, letter b), had remained unchanged at the 1989/90 revision. In that case, likewise, the Revision Committee decided to double this amount; the 5th General Assembly has followed this decision (Report, p. 180). The maximum amount of 20 units of account (instead of 10 units of account) per kilogram or 300 units of account (instead of 150 units of account) per package also represents a real increase in the maximum amount, although to a lesser extent than in the case of proven damage.

4. In the 7th session (Report, p. 22), the Revision Committee decided to adapt the text of § 2 to the parallel provision of the CIM Uniform Rules. The 5th General Assembly decided to amend the text of Article 30, § 4 of the CIM Uniform Rules decided by the Revision Committee in the 20th session (Report, p. 14) in order to take account of the excise duty suspension procedure applied in the European Community (EC) (Report, pp. 79-84). This procedure, however, is not applicable to luggage; consequently, adaptation of § 2 to the amended text of Article 30 § 4 of the CIM Uniform Rules was not considered necessary.

Article 42
Compensation for damage

This article corresponds to Article 39 of the CIV Uniform Rules 1980.

Article 43
Compensation for delay in delivery

1. With the exception of the maximum amounts of liability, this article corresponds, in content, to Article 40 of the CIV Uniform Rules 1980.

2. The maximum amount of liability, both in the case of proven damage and in the case of damage being unproven, remained unchanged at the time of the 1989/90 revision. The 5th General Assembly followed the decision of the Revision Committee to double the maximum amounts of liability (Report, pp. 106-108 and 180). This gives a real increase equal to the increase in the case of loss when damage is not proven (see Nos. 2 and 3 of the remarks relating to Article 41).

Section 3

Vehicles

Article
Compensation for delay

Article 45
Compensation for loss

Article 46
Liability in respect of other articles

Article 47
Applicable law

1. The provisions concerning compensation in case of delayed delivery and in case of loss of a vehicle, as well as liability in respect of object left in the vehicle, have been taken from Article 41, §§ 1 to 4 of the CIV Uniform Rules 1980, adapted and divided into different articles. In accordance with Article 47, the provisions relating to liability in the case of damage to luggage (Article 42) are applicable in respect of the liability in the case of damage to a vehicle.

2. With regard to articles left in the vehicle, the carrier remains liable (cf. Article 41, § 4 CIV 1980) only in respect of damage resulting from the fault of the carrier. With regard to liability, objects in enclosures (e.g. vehicle luggage boot or ski box) which are fixed to the vehicle and articles left in the vehicle (§ 1) are newly placed on an equal footing. With regard to articles on the outside of a vehicle carried as part of the carriage of passengers, but which are not protected by such enclosures, and with regard to the enclosures themselves, the carrier is liable only in the case of qualified fault in the sense of Article 46, § 2.

3. The maximum amount of compensation in case of loss (and thus also in case of damage), which had been increased from 4000 units of account to 8000 units of account in the 1989/90 revision, was *not* adapted by the 5th General Assembly (Report, pp. 110-112 and 180/181). 80/181). Due to the increase decided in 1990, the

loss in real value since 1980 has been more or less compensated, but in fact the situation will still have deteriorated: at the time when the new CIV Uniform Rules come into force, the real value of the amount will be lower than when the 1990 Protocol came into force. The carrier may, however, increase his liability on a voluntary basis (Article 5).

Chapter IV

Common Provisions

Article 48
Loss of right to invoke the limits of liability

The regulation of Article 42 of the CIV Uniform Rules 1980, in the terms of the 1990 Protocol, has been reincluded as it stands.

Article 49
Conversion and interest

The content of this provision has been taken, as it stands, from Article 43 of the CIV Uniform Rules 1980, in the terms of the 1990 Protocol. The minimum amount defined in § 4, which has already been quadrupled (!) in 1989, has been doubled again and, consequently, amended to the detriment of the client (Report on the 5th General Assembly, p. 113).

Article 50
Liability in case of nuclear accidents

The regulation of Article 44 of the CIV Uniform Rules 1980 has been raincloud as it stands.

Article 51
Persons for whom the carrier is liable

This provision states that the manager of the infrastructure is considered as an auxiliary of the carrier and, consequently, as a person for whom the carrier is liable. For the grounds for this provision, see the remarks relating to Article 40 of the CIM Uniform Rules.

Article 52
Other actions

This provision has been taken, as it stands, from Article 46 of the CIV Uniform Rules 1980. It corresponds to Article 41 of the CIM Uniform Rules. The Revision Committee has opted for the retention of the current regulation, in order to prevent the legal system concerned with liability in contractual lawsuits from being bypassed by the exercise of rights on an extra-contractual basis. The Revision Committee, in the deliberations on the CIM Uniform Rules, rejected exceptions in favour of third parties who are not party to the contract, on the grounds that the interests of the latter must be protected outside transport law (Report on the 20th session, 3rd meeting, pp. 21-23).

Title V

Liability of the Passenger

Article 53
Special principles of liability

1. Contrary to the pertinent provisions of the CIV Uniform Rules 1980 (Article 22, § 1 and Article 15, § 6), the same basis of responsibility has been retained for the two special cases of passenger liability regulated in the CIV Uniform Rules, namely, liability for presumed fault, with the possibility of exoneration from this liability. The current distinction between a strictly objective liability in the case of non-compliance with certain provisions of the CIV Uniform Rules (Article 22, § 1 CIV 1980) and a liability for fault with reversal of the burden of proof for damage caused by objects and animals accompanying the passenger (Article 15, § 6 CIV 1980) was judged to be inappropriate, particularly since in some Member States the liability according to Article 22, § 1 of the CIV Uniform Rules 1980 is interpreted as being an objective liability without possibility of exoneration.

2. Article 53 penalises non-compliance with certain obligations of passengers, including the obligations which ensue from the special provisions of the General Conditions of Carriage relating to the carriage of vehicles (Report on the 7th session, p. 31). The list is not exhaustive, as has to be expressed by the title “Special principles of liability”. The passenger’s liability in case of non-compliance with other obligations will be regulated by the national law.

3. In order that the passenger is not made subject to a strict liability for the slightest irregularity, the possibility of exoneration was extended in the second reading by the introduction of grounds for exoneration from liability based on “diligence required of a conscientious passenger” (Report on the 17th session, 3rd meeting, p. 43/44).

Title VI

Assertion of rights

Article 54
Ascertainment of partial loss or damage

Article 48, § 3 of the CIV Uniform Rules 1980 has been removed for reasons of simplification, since there is a clear obligation to reduce damage. The wording of Article 54 of the CIV Uniform rules corresponds to that of Article 42 of the CIM Uniform Rules (see relevant Explanatory Report).

Article 55
Claims

1. The wording, taken to a large extent from Article 49 of the CIV Uniform Rules 1980, has been simplified and also adapted for the situation in which a single carrier provides an international transport service.

2. In the case of carriage performed by subsequent carriers, claims relating to liability in case of death of, or injury to passengers can also be addressed to a carrier whose main office is located in the State of habitual domicile or residence of the passenger or whose branch office or agency which concluded the contract of carriage is located in that State. The wording of this provision expresses clearly the notion that the act of "agency" must be an act by the actual carrier. It is not sufficient for the agency to act as an intermediary in the conclusion of the contract of carriage (Report on the 7th session, p. 32/33). Thus, for example, the sale of tickets for Eurostar in the United States would have to be effected on behalf of the carrier. As far as the term "branch or agency" is concerned, see No. 2 of the remarks relating to Article 46 of the CIM Uniform Rules.

3. In other respects the current claim procedure and the current legal consequence of the claim have been retained (for interest, see Article 49, and for suspension of barring by limitation, see Article 60, § 4).

Article 56
Carriers against whom an action may be brought

This provision corresponds, essentially, to Article 51 of the CIV Uniform Rules 1980. Following the example of Article 45, § 6 of the CIM Uniform Rules, the substitute carrier is expressly mentioned in Article 56, § 6. Since the minimum content of the luggage registration voucher (Article 17) and of the carriage voucher (Article 24) includes indication of the carrier, it is possible to identify the carriers against whom a lawsuit may be instigated in accordance with §§ 2 and 3. It goes without saying that a carrier may not be mentioned on the luggage registration voucher or on the carriage voucher without that carrier's agreement (Report on the 7th session, p. 35). It is the responsibility of the rail carriers to ensure that this is guaranteed in practice. Due to the parallel with the rules concerning the carriage of goods, Article 56, § 3 was formulated after the example of Article 45, § 2 of the CIM Uniform Rules.

Article 57
Forum

The regulation concerning the forum was conceived after the model of Article 46 of the CIM Uniform Rules, but with the difference that lawsuits based on the CIV Uniform Rules can only be instigated before the jurisdictions of the *Member States*. This restriction was judged necessary for the CIV Uniform Rules - contrary to the CIM Uniform Rules - due to the fact that the national law is to a large extent applicable in the case of bodily injury (lex fori). Although claims can be addressed, for example, to an American agency of the SNCF (see Article 55), lawsuits cannot be instigated before American courts. The new title of this article represents an editorial improvement (cf. Article 52 CIV 1980).

Article 58
Extinction of right of action in case of death or personal injury

This article corresponds to Article 53 of the CIV Uniform Rules 1980, but with the term, according to § 1, during which the carrier must be notified of the passenger's accident, having been increased from six months to twelve months. The proposal by Germany, of not providing for any extinction of right of action in case of death of or injury to passengers, with the

consequence that such a right of action would never become extinct, was rejected by the Revision Committee (Report on the 17th session, 3rd meeting, p. 48/49).

Article 59
Extinction of right of action arising from carriage of luggage

This provision corresponds, essentially, to Article 54 of the CIV Uniform Rules 1980. According to § 2, letter d), only the proof of the - simple - fault of the carrier is required whereas, according to the CIV Uniform Rules 1980, the rightful claimant must prove that the damage was caused by a false representation or major fault that can be imputed to the railway. The parallel provision of Article 47, § 2, letter d) of the CIM Uniform Rules requires the proof of a qualified fault. Thus, the protection of passengers goes beyond that of clients in the case of the carriage of luggage.

Article 60
Limitation of actions

This provision corresponds to Article 55 of the CIV Uniform Rules 1980; § 3, however, has been simplified following the example of Article 48, § 2 of the CIM Uniform Rules.

Title VII

Relations between Carriers

Article 61
Apportionment of the carriage charge

This provision corresponds, in content, to Article 56 of the CIV Uniform Rules 1980, but with editorial adaptations. Following the example of Article 49 of the CIM Uniform Rules, a new § 2 has been added, which indicates that the transport documents also have evidential value with regard to relations between the carriers.

Article 62
Right of recourse

This provision corresponds, in content, to Article 57 of the CIV Uniform Rules 1980.

Article 63
Procedure for recourse

Article 63 corresponds, essentially, to Article 59 of the CIV Uniform Rules 1980. However, it also includes a regulation concerning the place of jurisdiction (cf. Article 60 CIV 1980) and is therefore composed following the example of Article 51 of the CIM Uniform Rules, i.e., its wording is more general than formerly. The court of the head office of the rail carrier against whom recourse is instigated is not solely competent; also competent, at the option of the plaintiff, is the court of the State in which one of the carriers participating in the carriage has their habitual residence, principle place of business or branch or agency which concluded the contract of carriage (see also No. 2 of the remarks relating to Article 55). Since no provision had been made to adapt the Uniform Rules to the parallel provisions of other international conventions (Article 51 CIM and, consequently, also Arti-

cle 63 CIV, Article 39 CMR) at the cost of a deterioration of the situation of rightful claimants, § 6, which had initially been removed, was reintroduced on the 2nd reading (cf. Article 64, § 5 CIV 1980). This provision prevents actions for recourses from delaying the petition for compensation made by the rightful claimant (Report on the 17th session, 3rd meeting, p. 53/54).

Article 64
Agreements concerning recourse

Article 64 corresponds, essentially, to Article 61 of the CIV Uniform Rules 1980. However, the derogations from the rules of procedure which come under public law (Article 63) are not permitted (Report on the 17th session, 3rd meeting, p. 54).

Uniform Rules Concerning the Contract of International Carriage of Goods by Rail (CIM)

Explanatory Report [7]

General Points

Background

1. The basic concept of international rail transport law consisted of grouping together *ex lege* several subsequent railways running and operating, on a national scale only, as a community of transport and liability. By the very fact of assuming charge of the goods with the consignment note, such assumption being required of them within the scope of their obligation as carrier, the subsequent railways accept the contract of carriage concluded by the forwarding railway, this being in accordance with the stipulations of this document (Article 35 CIM 1980). This same principle applies to the carriage of luggage. On the other hand, such a collective liability does not exist in the case of death or injury of passengers, where the railway operating the line on which the accident occurs is solely liable (Article 26 CIV 1980).

2. Connected with the basic concept of a community of transport and liability of rail carriers undertaking subsequent transport are several other institutions which are typical of conventional international rail transport law. The purpose of the obligation to carry, and also the obligation to establish tariffs, was to prevent abuse of the monopoly position initially enjoyed by the railways. Article 3 of the CIM Uniform Rules 1980 defines the conditions under which there is an obligation to carry. The obligation to take over the goods and the obligation of the subsequent railway to enter into the contract of carriage and, consequently, the obligation to ensure subsequent transportation, ensue from the inclusion of the respective railway in the list of lines. The tariff obligation is closely linked to the obligation to carry.

3. The notion of “line” is not defined by COTIF 1980; it is presupposed. This notion was initially based on the fixed rail link which, however, was always registered with the operating rail company in the list of lines. It is interesting to note that the first list of lines annexed to the International Convention concerning the Carriage of Goods by Railway (CIM) of 1890 uses the terms “railway”, “sections”, “lines” (German: “Eisenbahn”, “Bahn”, “Bahnstrecken”, “Linien”) as synonymous terms. Article 58 of CIM 1890 refers, for example, to the inclusion or the deletion of “railways”, which clearly indicates that, in principle, the notion of “line” also includes the operating company. This is the consequence of the attitude which was predominant at the time, and is still widespread in some places today, which considers the “rail” system (railway track and rail transportation) as one unit. In the special cases of common operation of a line, the companies involved in such operation are each included in the list of lines.

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7 The articles, paragraphs, etc. which are not specifically designated are those of the CIM ; unless otherwise evident from the context, the references to the reports on sessions not specifically identified relate to the sessions of the Revision Committee.

4. The notion of “operation” itself is likewise presupposed. Consequently, it is not defined in either CIM 1890 or COTIF 1980. According to the usual meaning, all acts associated with the transportation service constitute part of “operation”, whereas the ownership of the installations or means of operation, including the rolling stock, is not determinant for operation. The notion of the “operation of the railway” includes the entire organisation, in both the technical and operational aspects. In special cases, particularly in frontier lines, jointly operated lines are also registered, i.e., lines where several private or public parties operate their railways under common risk and manage these railways by means of a common management on the basis of special contracts In this case, each party to the contract is considered as an operator.

5. The constitution of a community of transport and liability of railways involved in international carriage and the franchising possibilities according to the provisions of Article 15 of the CIM Uniform Rules 1980 entail the obligation to regulate in advance the financial relations of the participating railways, partly in the Convention and partly by means of agreements concluded by the railways whose routes are included in the list of lines. States wishing to register a line thus guarantee, to some extent, the ability and willingness to pay railways operating the included lines. The purpose of Article 17, § 6 of COTIF 1980 is to provide protection against the financial risks resulting from the obligatory transport community constituted by the railways participating in the contract of carriage.

6. The Judgment of the Court of Justice of the European Community (CJEC) of 22 May 1985, by which the Council of the European Community (EC) was also obliged to introduce freedom of services into the area of transport policy, and the Single European Act of 10 July 1987, gave a new impetus to European transport law, including rail transport. The Council Directive 91/440/EEC of 29 July 1991 concerning the development of Community’s railways changed the relations both between the State and the railway and between the railways, particularly with regard to monopoly of operation. This was bound to have consequences in the area of international rail transport law.

7. Insofar as competitive access to a foreign infrastructure is possible, on the grounds of the Directive 91/440/EEC, a carrier may, on the basis of a single contract, undertake direct international carriage from the place of departure to the destination by using the railway infrastructure of different States or different networks within one State.

8. According to Article 1 of the Convention on the Contract for the International Carriage of Goods by Road (CMR), any contract for the carriage of goods by road in road vehicles for reward is subject to the said Convention when the place of taking over of the goods and the place designated for delivery are located in two different States. The CIM Uniform Rules (CIM UR) 1980, on the other hand, are applicable only when the carriage is undertaken exclusively on lines which are included, in accordance with Articles 3 and 10 of COTIF 1980, in the list of lines and when a CIM international consignment note is used. Hitherto, direct international carriage by rail has only been possible on the basis of the CIM Uniform Rules, otherwise several subsequent contracts of carriage had to be concluded in accordance with the national

law. It was thus of the greatest importance to the parties to the contract of carriage to make international carriage subject to the CIM Uniform Rules.

9. Since then the political and technical conditions, as well as the market conditions, which in the nineteenth century had favoured the existence of integrated ("monolithic") rail companies, have changed fundamentally not only in the Member States of the EC. Within the context of general trends towards liberalisation, a restructuring of the railways is under way or at least under discussion in a whole range of countries, towards greater independence in relation to the State, division into different areas of activity or the possibility of competitive access to the infrastructure.

10. The areas of application of the Directive 91/440/EEC on the one hand and of COTIF 1980 on the other hand are not identical. The standards of these two legal instruments are not mutually exclusive and can, in principle, exist side by side. However, certain legal difficulties may arise with regard to the application of the CIM Uniform Rules 1980 in the case of separation of infrastructure management from transportation (in the terminology of the EC: "provision of transport services"). Indeed, the latter is based on the principle that these services - the management of the infrastructure and carriage - are provided by a single company, the "railway".

Preparatory work

11. In its circular letter of 22 January 1993, the Central Office analysed in detail the consequences resulting from the separation of infrastructure management from the provision of transport services.

12. In order to safeguard as far as possible the uniformity of the international rail transport law as set out in COTIF 1980, the Central Office suggested the devising of supplementary provisions, in accordance with Article 9 CIM 1980 (and in parallel to Article 7 CIV 1980), concerning the interpretation of the Uniform Rules in such a case. An ad hoc Committee, mandated by the Administrative Committee, met in Bern from 22 to 26 November 1993. In accordance with its mandate, the Committee adopted supplementary provisions concerning the interpretation of the CIM Uniform Rules 1980 (and of the CIV Uniform Rules 1980). These supplementary provisions are put into force and published in the forms provided for by the laws and regulations of each Member State. Their entry into force is notified to the Central Office, which informs all the other Member States. To date (status: 1.7.1999), only 16 Member States have put the supplementary provisions into force.

13. The ad hoc Committee and the Central Office were conscious of the fact that the supplementary provisions could be no more than an interim solution. The foreword to the supplementary provisions states that a revision of COTIF 1980 is both necessary and urgent.

14. In considering an in-depth revision of COTIF, it must be remembered that the circle of Member States of OTIF is much more widespread that that of the Member States of the EC. This is why, before addressing the revision work proper, the Central Office endeavoured to familiarise itself with the position of the Member States of OTIF with regard to a range of questions of principle. The above-mentioned ad hoc Com-

mittee noted a list of questions prepared by the Central Office and supplemented these with some additional topics. In its circular letter of 3 January 1994, the Central Office requested the States and the interested international organisations and associations, as well as companies wishing to set out their own opinion by way of supplement and independently of the position of the International Rail Transport Committee (CIT), to submit their responses to the Central Office in writing.

15. A circular letter, dated 25 November 1994, giving a detailed synthesis of the responses from a total of 14 governments, six non-governmental international organisations and associations, as well as a certain number of railway companies, with an appended summary of these responses, was sent to the Member States and to the interested international organisations and associations. Through the agency of the CIT, the synthesis of the responses was made available to the railways of the Member States represented in the CIT. In addition, the Central Office published a summary of the responses in the Bulletin for International Carriage by Rail, 1994, pp. 115-134.

16. Due to a joint initiative of the International Association of Users of Private Sidings (AIEP) and the International Association of Tariff Specialists (IVT), the latter organised a preparatory conference of the principal international associations of rail transport users, held in Vienna on 20 and 21 October 1994. Participants in this conference were representatives of the Federal Ministry of the Public Economy and Transport of the Republic of Austria, the International Federation of Freight Forwarders Associations (FIATA), the AIEP, the International Union of Private Wagons (UIP), the International Union of Combined Rail and Road Transport Companies (UIRR), Transfesa and the Central Office.

17. On the basis of this preparatory work, the Central Office compiled a draft of new CIM Uniform Rules which was sent, with an explanatory report (Annexes 1 and 2 to the circular letter of 5.5.1995, published in the 1995 Bulletin, pp. 88-116), to the Member States and the interested international organisations and associations for their comment. The aim of this draft was to adapt the international rail transport law to the changed political, economic, legal and technical circumstances.

18. In the first reading, the Revision Committee examined the Central Office draft of 5 May 1995 in the course of a total of 3 sessions (11 - 15.12.1995, 25 - 29.3.1996 and 26 - 29.8.1996); the 2nd reading was completed in the course of 2 further sessions (23 - 27.3.1998 and 2.9.1998) (but see also Nos. 25-29 of the remarks relating to Article 1). The 4th General Assembly (Athens, 8 - 11.9.1997) had only noted the status of the work.

19. Despite the meticulous preparatory work of the Revision Committee, the 5th General Assembly still had to discuss 20 proposals or suggestions from States, international organisations and associations and from the Central Office. This resulted in substantive amendments in 8 articles (Report, pp. 67-72, 74, 79-84 and 181/182).

Principles of the reform

Harmonisation

20. The objective was to achieve, as broadly as possible, harmonisation with the transport law applicable to other modes of transport, particularly with the CMR, which is applicable to the international carriage of goods by road.

Scope

21. Following the example of the CMR, the CIM Uniform Rules will in future apply to contracts of direct international carriage of goods by rail, this being, in principle, independently of a system of registered lines. Carriage by road and inland waterway are only subject to the CIM Uniform Rules if they complement international carriage by rail by such carriage in internal traffic on the basis of a single contract. The system of registered lines will be retained only in the case of carriage that includes national or international carriage by sea or trans-frontier carriage by inland waterways.

22. As in the case of the CMR, application of the CIM Uniform Rules is mandatory. In future, this will also apply in the case of direct international carriage undertaken by a single rail carrier using several different infrastructures, including foreign infrastructures.

Contract of carriage

23. The future contract of international carriage of goods by rail is a consensual contract, with the consignment note being only a documentary proof, after the example of the CMR consignment note. The contract is concluded with the railway, as the carrier, irrespective of the railway infrastructureused. Moreover, the consignment note is also a customs document within the framework of the Community/Common Dispatch/Transit Procedure (EC / EFTA) (see No. 7 of the remarks relating to Article 6).

Obligation to carry, obligation to establish tariffs

24. These obligations are withdrawn in respect of the international carriage of goods by rail. In the preparatory work within the Revision Committee, however, the possibility of retaining an obligation to carry, at least with regard to the carriage of dangerous goods, had been envisaged for political reasons. However, even such a restricted obligation to carry raises difficult questions with regard to the conditions for such an obligation and with regard to the financial compensation of the additional risks incurred by the carrier.

25. In the discussions, different experts had expressed the opinion that the law on competition would lend itself better to such a regulatory function than would the obligation to carry and the obligation to establish tariffs: a company which publicly offers transport services cannot limit its offer at any time or without reasons without the risk of suffering disadvantage in a market which is characterised by competition.

26. In addition, the removal of the monopoly position within the framework of the liberalisation of access to the railway infrastructure poses the fundamental question of which rail transport company could be made subject to such an obligation to carry.

27. Consequently, the Revision Committee rejected, by a large majority, an obligation to carry, including the case of dangerous goods (Report on the 3rd session, p. 11). This also applies to the closely associated obligation to establish tariffs.

Subsequent carriers

28. The principle of a community of carriers and of joint responsibility in carriage undertaken by two or several subsequent carriers is retained (see Nos. 1 and 3 of the remarks relating to Article 26).

Liability

29. The current system is retained in principle. Nevertheless, the carrier will not be able to be exonerated from liability in respect of the client in cases where the damage is caused by faults of the railway infrastructure or of the infrastructure safety systems.

Contractual freedom

30. The new CIM Uniform Rules, as mandatory law, contain fewer detailed provisions than is currently the case, this being in order to offer a greater flexibility, enabling the parties to the contract of carriage to contractually agree certain conditions, e.g., itinerary, transit periods, surcharges.

Miscellaneous

Common provisions

31. In its 16th session, the Revision Committee decided, in principle, that the identical provisions of the Appendices to the Convention would be introduced into the Convention itself, as common provisions (Report on the 16th session, pp. 7, 12 and 15). Consequently, the provisions relating to the applicable national law, the unit of account, the supplementary provisions, the security for costs, the execution of judgements and the attachement are contained in Articles 8 to 12 of COTIF (Report on the 19th session, pp. 13-17).

Prohibition on transporting

32. In consideration of the withdrawal of the obligation to carry, a rail carrier may and, in the cases mentioned in Article 4 of the CIM Uniform Rules 1980, must refuse to conclude a contract when the performance of the latter infringes a prohibition pronounced by a law or by an authority (e.g., postal monopoly, transportation of arms, drugs, etc.). Consequently, the provisions as given in Article 4 of the CIM Uniform Rules 1980 have been relinquished (Report on the 3rd session, p. 11).

Special provisions for certain types of transport

33. Certain provisions aimed at excluding from the scope of application carriage in connection with funerals or furniture removal, after the example of Article 1, paragraph 4 of the CMR, were not considered to be necessary in rail transport law (Report on the 3rd session, p. 11).

34. Article 8 of CIM 1980 was not reincluded. Certain special provisions relating to liability in the transportation of wagons as transported goods and to compensation in case of loss or damage of intermodal transport units which, hitherto, were contained in the Regulations concerning the International Haulage of Private Owner's Wagons (RIP - Annex II to the CIM Uniform Rules 1980) or in the Regulations concerning the International Carriage of Containers by Rail (RICo - Annex III to the CIM Uniform Rules 1980), are now contained in Article 24, Article 30, § 3 and Article 32, § 3. Moreover, the use of wagons in general, i.e., without restriction to private wagons, is regulated in the CUV Uniform Rules.

35. The special provisions of the Regulations concerning the International Carriage of Express Parcels by Rail (RIEx - Annex IV to the CIM Uniform Rules 1980), particularly those relating to the transit periods and the derogations from various provisions of the CIM Uniform Rules, become superfluous since, in future, these matters will constitute the subject-matter of an agreement between the parties. The carriage of dangerous goods as express parcels, i.e., in trains other than goods trains, will be regulated within the framework of the new Regulation concerning the International Carriage of Dangerous Goods by Rail (RID). The general principle is that dangerous goods may only be transported in goods trains. The exceptions (dangerous goods as express parcels, hand luggage, luggage and goods on board accompanied road vehicles) will, in future, be regulated separately in the Annex to RID (see also the Report on the 3rd session of the Working Group of the Committee of Experts on RID, 21 - 25.11.1994, Nos. 7 and 8).

36. Provision was not made for the possibility of providing for special conditions of consignments under cover of a negotiable transport document (Article 8, § 4, letter a) CIM 1980), since, hitherto, the railways have never made use of this possibility of exception and that this same exception, provided for within the CMR, has not been used either. Moreover, Article 6, § 8 makes provision for international carriers associations to devise uniform models for consignment notes.

37. The possibility of the use of electronic transport documents (Article 8, § 4, letter g) CIM 1980) is regulated in Article 6, § 9).

Agreements

38. Insofar as provision is made for agreements between the parties to the contract of carriage, they can be agreed in the form of tariffs or General Conditions of Carriage which will be incorporated in the individual contracts, or they can be concluded for each individual case.

Result

39. The text drafted by the Revision Committee and adopted by the 5th General Assembly takes account, in principle, of the amendments due to the liberalisation of rail traffic, particularly the Directive 91/440/EEC. The scope of application of the CIM Uniform Rules has been broadened and, in future, allows them to be applied also in traffic with non-member States, insofar as this is agreed by the parties (see Nos. 2-9 of the remarks relating to Article 1).

40. The harmonisation that was sought with international road transport law has been achieved in different areas. Nevertheless, the differences in relation to the CMR remain in certain cases. This can be partially explained by the fact that practice in the area of international carriage by rail is not identical to that found in international carriage by road. This argument was put forward by the Revision Committee to justify the differences in relation to international road transport law, particularly with regard to the following provisions:

- evidential value of the consignment note (Article 12),
- consignee's right to dispose of the goods (Article 18, § 3),
- liability in the execution of subsequent orders (Article 19),
- exoneration from liability in the case of carriage in open wagons (Article 23),
- regulation of the burden of proof in the case of carriage undertaken using wagons equipped with special devices for the protection of the goods, particularly refrigerated wagons, as well as in the case of the carriage of live animals (Article 25),
- special regulation of the liability in the case of westage in transit (Article 31),
- special provisions for the transportation of wagons as transported goods and for the carriage of intermodal transport units, with regard to the principle of liability in respect of compensation (article 24, Article 30, § 3 and Article 32, § 3),
- exercise of rights, particularly with regard to the provisions relating to the ascertainment report (Article 42) and the extinction of lawsuits against the carrier (Article 47).

41. In other cases, differences were accepted, since the provisions of the CIM Uniform Rules are more favourable to the client or promote legal clarity. This applies particularly to the following provisions:

- moving away from the mandatory nature of CIM Uniform Rules for the two parties to the contract, in return for a regulation allowing the carrier to extend his liability and obligations (Article 5, last sentence),
- determination of the principal obligations of the carrier (article 6, § 1),

- more severe liability than that provided for in Article 11, paragraph 3 of the CMR, in the case of loss or misuse of documents attached to the consignment note (Article 15, § 3),

- retention of higher maximum compensation amounts (Articles 30 and 33),

- substitute carrier (Article 27),

- modern formulation of qualified fault (Article 36),

- Qualification of the infrastructure manager as an auxiliary (Article 40),

- electronic consignment notes and replacement of the signature (Article 6),

- no refund of excise duties in connection with goods carried under the suspension of such duties (Article 30),

- liability in rail-sea traffic (Article 38).

42. In consideration of the principal objectives of the revision, to modernise the law on the international carriage of goods by rail and to harmonise this law, the overall result may be considered to be satisfactory. In the absence of contrary indications, the 5th General Assembly adopted the result of the deliberations of the Revision Committee (Report, pp. 61-84).

In particular

Title I

General Points

Article I
Scope

1. As currently the case, the CIM Uniform Rules apply to contracts of international carriage of goods by rail. Other types of contract relating to the carriage of goods, such as, for example, transport commission contracts, charter contracts, the hiring of means of transport, etc., are not regulated by the CIM Uniform Rules. The application of the CIM Uniform Rules depends, ultimately, on the type of contract chosen in a particular case. The consignment note serves as a means of proof (see No. 23 of the General Points and No. 6 of the remarks relating to Article 6).

2. In accordance with § 1, the future CIM Uniform Rules will be applicable only to contracts *for reward*, as also provided for in Article 1, paragraph 1 of the CMR. Consequently, the CIM Uniform Rules are not obligatorily applicable to the free transportation of rescue goods (see also Article 6, § 1, which obliges the carrier to carry the goods only against payment). However, the parties may come to a (contractual) agreement on their application (but see No. 7).

3. According to the Central Office draft of 5 May 1995, it would have been sufficient in future for either the place of taking over of the goods or the place designated for delivery to be located in a Member State. That draft did not require that all the States through which carriage was effected should be Member States of the Organisation. This solution has been tried and tested for decades with respect to the CMR and would have enabled the CIM Uniform Rules to be applied also to carriage to, from or through States in which the Convention concerning International Goods Traffic by Railway (SMGS) of 1 November 1951 is applied. The majority of the Revision Committee, however, favoured a more restrictive wording, according to which the CIM Uniform Rules are applicable only when the place of taking over of the goods and the place designated for delivery are located in two different Member States (Report on the 3rd session, p. 4).

4. The Revision Committee dealt with this question again in the 2nd reading and, by a clear majority, approved an extension of the scope of application along the lines of the Central Office draft (Report on the 16th session, p. 3), but with the proviso that the parties to the contract should agree the matter. Consequently, the Revision Committee did not go as far as the authors of the CMR.

5. The text adopted by the Revision Committee in the second reading and confirmed by the 5th General Assembly § 1) thus provides that the CIM Uniform Rules apply *obligatorily* to all contracts for the carriage of goods by rail for reward when the place of taking over of the goods and the place designated for delivery are located in two different Member States. If, on the other hand, the place of taking over of the goods and the place designated for delivery are located in two different States of which only *one* is a Member State, the parties may *agree* to make the contract subject to the CIM Uniform Rules (§ 2). This solution will enable direct contracts of carriage by traffic to or from SMGS States to be concluded on the basis of the CIM Uniform Rules.

6. Such an agreement can be concluded using the CIM consignment note. The use of the CIM consignment note is a sufficient, but not necessary, condition.

7. Essentially, all legal regimes recognise the principle according to which the parties may choose the law that is applicable to an international contract under civil law or commercial law. The freedom of substantive choice, however, may be restricted by the fact that the mandatory provisions of the material law of a State cannot be replaced by a dispensatory agreement of the parties. The question of whether and, if applicable, to what extent this is the case must be appraised in accordance with lex fori. In certain cases, this could entail legal uncertainty when the parties assert their rights arising from the CIM Uniform Rules in non-member States, particularly with regard to debarment by limitation.

8. In order for the choice of law made by the parties to the contract to be recognised by the national law, the contract must have a foreign connection of one type or another. This is indisputably the case in respect of contracts for the international carriage of goods which are to be made subject to the CIM Uniform Rules.

9. The possibility, according to the CIM Uniform Rules, of the choice of legal system may consequently be provided without any conflict with the principles or conventions of existing international law. A similar regulation is contained in Article 2, § 1, letter e) of the Hamburg Rules relating to the carriage of goods by sea.

10. There is no conflict with the SMGS, since the scope of application of the SMGS is limited, according to its Article 1, to *direct* carriage undertaken by the railways of the Member States of the SMGS, i.e., it does not include carriage of goods by rail also undertaken by railways of States which are not members of the SMGS. The wording of § 2 decided by the Revision Committee and adopted by the Fifth General Assembly does not oblige the parties to apply the CIM Uniform Rules. They may continue to conclude several contracts of carriage, as is currently necessary in East/West traffic.

11. The question of whether the SMGS railways are to be considered as subsequent carriers in accordance with Article 26 or as substitute carriers in accordance with Article 27 depends on the manner in which the rail carriers involved regulate the *contractual* relationship between them.

12. As already explained in No. 20 of the General Points, the CIM Uniform Rules should be applicable, after the example of the CMR, to direct contracts for the international carriage of goods by rail, this being independently of a system of registered lines. Provision is made for exception only in the case of carriage which includes carriage by sea or trans-frontier carriage by inland waterways (§ 4).

13. The problem of a conflict with the CMR in the case of complementary carriage by road being subject to COTIF and to the CIM Uniform Rules had already been discussed in the context of the amendment of Article 2 of COTIF 1980 by the 1990 Protocol. In view of the differing opinions within the Revision Committee (see Report on the 1st session, pp. 6-8) and within the 2nd General Assembly (see Report, p. 33/34), only *internal* complementary carriage, i.e., initial and final carriage by road which is not itself trans-frontier carriage, was included in the scope.

14. In practice, trans-frontier complementary carriage by road is undertaken, particularly in cases where the forwarding station or the station of destination is located close to the frontier. The text proposed by the Central Office in May 1995 had included complementary carriage by road, whether solely internal carriage or trans-frontier complementary carriage by road.

15. It is the opinion of the Central Office that there is no conflict with the CMR in the case of complementary carriage by road. The contract of carriage regulated by Article 1 differs from the contract regulated by the CMR, namely, a contract whose purpose is “the carriage of goods *by road* in vehicles for reward”. This, clearly, on the condition that the carriage by rail and the carriage by road as a supplement constitute the subject-matter of a *single* direct contract of carriage. Fearing the risk of conflict with the CMR, a large majority of the delegates within the Revision Committee rejected the idea of also including trans-frontier complementary carriage by road within the scope of application of the CIM Uniform Rules (Report on the 3rd session, p. 8).

16. The term “as a supplement” is intended to express the idea that the principal subject-matter of the contract of carriage is trans-frontier carriage *by rail.* This means that, in the case of complementary carriage in accordance with § 3, the carriage by rail must, in principle, be trans-frontier, otherwise the CIM Uniform Rules are not applicable. In particular:

17. In the case of carriage *by road by means of vehicles*, as supplement to carriage by rail, it is necessary that

- the carriage by rail is trans-frontier carriage
- the complementary carriage by road is exclusively internal carriage.

18. In the case of carriage *by inland waterway*, as supplement to carriage by the rail, it is necessary that

- the carriage by rail is trans-frontier carriage
- the carriage by inland waterway is inland traffic carriage, except in the case of carriage on a registered inland waterway line (see § 4).

19. In the case of carriage *by sea* or *by inland waterway on registered lines* as supplement to carriage by rail (§ 4), it is possible for

- the carriage by rail to be internal traffic carriage and for the complementary carriage by sea or by inland waterway to be trans-frontier carriage, or
- the carriage by rail to be trans-frontier carriage and for the complementary carriage by sea to be trans-frontier carriage or internal carriage by sea (e.g., intercoastal).

Relative to § 3, the regulation of § 4 constitutes a lex specialis. In the interest of legal clarity, the registration of lines is required in the case of trans-frontier carriage by inland waterway in order so to exclude - following the example of the CIM Uniform Rules 1980 with regard to relationship with maritime law - any possible conflicts with a future agreement on international carriage by inland waterway. Due to the fundamentally different approach of maritime transport law and also in the interest of legal clarity, the registration of lines is always required, even in the case of internal carriage by sea.

20. In all cases, however, it is necessary for the entire carriage, i.e., the carriage by rail and the complementary carriage by other means of transport, to constitute the subject-matter of a single contract.

21. In the case of complementary carriage by other means of transport, application of the CIM Uniform Rules is mandatory and not left to the agreement of the parties, since in all cases it is a matter of trans-frontier carriage, the essential element of which is carriage by rail.

22. Insofar as rail transport companies do not themselves undertake initial and final carriage by road, using instead road transport companies, the latter are not substitute carriers in the sense of Article 27, but auxiliaries in accordance with Article 40. This is clarified by the term "by rail" in Article 3, letter b) (see No. 3 of the remarks relating to Article 3 and the Report on the 5th General Assembly, p. 69).

23. According to Article 1, § 1 of the CIM Uniform Rules 1980, the use of a CIM consignment note is still a constituent element for the applicability of the CIM Uniform Rules. That is not to be the case in future, since the contract for the international carriage of goods by rail is also to be a consensual contract, following the example of the CMR contract (see No. 3 of the remarks relating to Article 6).

24. A provision equivalent to Article 1, paragraph 3 of the CMR has not been reincluded. That provision regulated the problem, current at the time of creation of the CMR, of carriage undertaken by state companies of socialist countries. Such a provision is no longer necessary at the present time. It is a principle generally recognised in the law of nations that activities which are not exercised *iure imperii*, but *iure gestionis* do not benefit from legal privilege. Consequently, such carriage is subject to the provisions of the CIM Uniform Rules, in accordance with the general principles of the law of nations, when they fulfil the conditions of Article 1 of the CIM Uniform Rules.

25. § 5 regulates the case of carriage which is not to be considered as international carriage due to the fact that the station located on the territory of a neighbouring State is not operated by the neighbouring State or by a company belonging to that State, but by state of private entities belonging to the same State as the transport company (example: Badischer Bahnhof, DB AG station, Basle). Such carriage will remain subject to national law, not to the CIM Uniform Rules (Report on the 16th session, p. 4/5).

26. The Central Office draft of 30 August 1996 concerning a new COTIF, basic Convention, had made provision for the possibility that lines which, in certain Member States, are not available to direct international traffic conducted on the basis of the CIM Uniform Rules, should be registered in separate lists, called negative lists. Such a provision would in future have allowed certain States to accede to COTIF if the application of the CIM Uniform Rules to the entire network of these States could not be considered for practical, economic or financial reasons.

27. The idea of a negative list had been approved in principle by the 4th General Assembly (8 - 11.9.1997) (see Guideline 7.2). In accordance with the suggestions of the Administrative Committee with regard to the financing of the Organisation, the Revision Committee decided, for practical reasons, to replace this "negative list" with the possibility of issuing a reservation on the scope of application of the CIM Uniform Rules (Report on the 21st session, p. 17/18). This possibility of issuing reservations is limited, however, to those States which are parties to a "convention concerning international through carriage of goods by rail comparable to these Uniform Rules". The SMGS of 1 November 1951 is one such comparable convention.

28. In the rewording, only the words "at the time of deposition of the instrument of accession" were retained since, for the States which come into consideration, the

only possibility is accession to COTIF. According to Article 5 of the Amendment Protocol 1999, such a reservation can also be issued at any time, in accordance with the Amendment Protocol, by a State which acceded to COTIF before the amended version came into force. According to Article 42, § 2 of COTIF, such a reservation becomes effective upon the entry into force of the Amendment Protocol.

29. In its 22nd session (1 - 4.2.1999), the Revision Committee decided to state that the part of the railway infrastructureon which international carriage is subject to the CIM Uniform Rules must be precisely defined and must be connected to the railway infrastructure of a Member State. Likewise, the CIM Uniform Rules do not apply to international carriage which starts or terminates other than on the specified infrastructure (Report, p. 55), with the exception of transit carriage, which is subject to the CIM Uniform Rules (Report on the 5th General Assembly, p. 67/68).

30. In its 22nd session, the Revision Committee stated that the reservation becomes ineffectual if its premise ceases to exist, i.e., if the agreement justifying this special regulation ceases to be in force in respect of the State in question.

Article 2
Prescriptions of public law

1. The obligation to comply with the prescriptions of public law goes without saying. This provision is declaratory only and was introduced in view of the fact that the customs law of the EC is based on certain provisions of the CIM Uniform Rules (Report on the 16th session, p. 5/6). Article 4 of the new Appendix C (RID) includes a similar provision, following the example of Article 5 of the European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR).

2. The 5th General Assembly supplemented this provision with an explicit reference to the provisions of the law on the protection of animals (Report, p. 68).

Article 3
Definitions

1. In view of the repeated discussions within the Revision Committee on the question of which carrier was intended in the various definitions, it was judged expedient to define certain terms which could otherwise give rise to different interpretations. Moreover, the definitions enable the text to be worded more succinctly.

2. The definition of the term “carrier” goes back to a proposal by the United Kingdom in connection with the draft CIV Uniform Rules (Report on the 6th session, p. 55/56) and states that the term “carrier” always means the *contractual* carrier, including subsequent carriers, and not the substitute carrier, who has not concluded a contract of carriage with the consignor (letter a).

3. The 5th General Assembly supplemented the definition of “substitute carrier” decided on by the Revision Committee, by inserting the words “the performance of the carriage by rail” (Report, p. 69). This avoids the situation whereby, as a result of this definition, road transport companies undertaking initial or final carriage which com-

plements carriage by rail are considered as substitute carriers in the sense of Article 27, the latter being independently liable and being liable to lawsuit in accordance with Article 45, § 6. On the contrary, such road transport companies are auxiliaries in the sense of Article 40.

4. The expression “legally in force in each Member State” in letter c) includes the necessity of a publication, insofar as such a publication is required by the national law, this not being the case in all Member States.

5. The text decided by the 5th General Assembly (“have become”) specifies that the conditions which must be met in order for the General Conditions to be included in the contract must be complied with (Report, pp. 69-71).

6. The definition “intermodal transport unit” was introduced for reasons of editorial simplification and facilitates, in particular, the wording of Article 7, § 1, letter 1), Article 23, § 3, letter a), Article 30, § 3 and Article 32, § 3 (Report on the 20th session, p. 6).

Article 4
Derogations

1. § 1 authorises the Member States to conclude special agreements for traffic between frontier stations.

2. In the absence of inclusion in the list of lines, carriage by Shuttle in the Channel Tunnel is not subject to the CIM Uniform Rules 1980. Registration of lines will not be required in future. Consequently, the CIM Uniform Rules would be applicable to carriage by shuttle trains when the place of departure and the destination are located in two different Member States. The Revision Committee decided to authorise the Member States to agree derogations for such carriage (Report on the 3rd session, p. 12/13). The wording of § 1 permits this.

3. Consignments whose forwarding station and station of destination are located on the territory of a single Member State and which do not make use of the territory of another State except in transit (Article 2, § 1 CIM 1980) are not subject to the CIM Uniform Rules in accordance with Article 1, § 1. Thus, the exceptions from the scope of application provided for in Article 2, § 2 of the CIM Uniform Rules 1980 have been relinquished. § 2, however, provides for the possibility of agreeing derogations for transit through non-member States (Report on the 3rd session, pp. 4/5 and 13).

4. In the context of the obligations to inform, as provided for in § 3, the Revision Committee was unable to decide, in the discussion of the identical provision contained in the CIV Uniform Rules, to follow the suggestion of the Central Office, namely, to grant the Secretary General of the Organisation the right to examine whether the agreed derogations are compliant with the conditions as provided in §§ 1 and 2 (Report on the 16th session, 3rd meeting, p. 8).

Article 5
Mandatory law

1. The essentially mandatory legal nature of the CIM Uniform Rules 1980 has never been contested, despite the fact that they do not include any provision equivalent to Article 41 of the CMR. Notwithstanding that fact, the Revision Committee decided to introduce such a provision for reasons of legal clarity (Report on the 3rd session, p. 15/16).

2. The text adopted by the Revision Committee and confirmed by the 5th General Assembly does, however, contain an important innovation in relation to Article 41 of the CMR. Following the example of Article 23, § 2 of the Hamburg Rules, the final sentence allows the carrier to extend his liability or his obligations in favour of the clients, the possibility for extension of liability not being limited to maximum amounts. The Revision Committee rejected a proposal by Germany which would have allowed the carrier to extend his liability only *in respect of the limits of liability* (Report on the 16th session, p. 11). This restriction sought by Germany would have been in the interest of the railways, which would thus have been less exposed to the pressure of large-scale freight agents.

Title II

Conclusion and Performance of the Contract of Carriage

Article 6
Contract of carriage

1. Upon proposal by Germany, the Revision Committee decided to define the principal obligations of the carrier in § 1 (Report on the 16th session, p. 16/17). Considered in the light of the provisions relating to liability in Article 23, § 1, Article 26 and Article 27, § 1, this represents a welcome precision, even if there is no similar provision in the CMR.

2. The point of transfer of risk in respect of goods in the carrier/consignor or consignee relationship is regulated in Article 23, by the provision relating to the period during which the carrier is liable (from taking over of the goods until delivery). This point may differ from the point of transfer of risk within the meaning of the law on purchase.

3. § 1 indicates that, in future, the contract for the international carriage of goods by rail will be a consensual contract. The new provision constitutes both an adaptation to the CMR and an adaptation to the practice of the international carriage of goods by rail. Only in exceptional cases does the carrier accept the consignment note and the goods at the same time. The new regulation also takes account of future developments: the use of electronic transport documents presupposes a consensual contract.

4. A formulation according to which the contract of carriage is concluded by mutual consent of the consignor and the carrier was rejected. On one hand, parallelism

is sought with Article 4 of the CMR. This provision has been tried and tested for decades. Neither in jurisprudence nor in doctrine has there been the slightest doubt as to the legal nature of the CMR contract of carriage as a consensual contract. On the other hand, the CIM Uniform Rules, like the CMR, must not include any statement concerning a legal question which must be regulated in accordance with the general principles of civil law (particularly the questions of how the consent is established, the parties to the contract, etc.). Consequently, the national law remains applicable for this important question.

5. Since the contract of carriage by rail is a consensual contract, the absence, irregularity or loss of the consignment note do not affect either the existence or the validity of the contract (§ 2).

6. Following the example of the CMR, the consignment note is a documentary proof only. It provides refutable proof of the conclusion and content of the contract of carriage and of the taking over of the goods by the carrier (see Article 12). In certain cases, (Articles 19, 34, 35 and 45, § 2), inscriptions on the consignment note may be a condition for the assertion of rights, thus giving the inscription a constituting effect.

7. § 7 includes a provision desired by the European Commission, which does not directly concern transport law but constitutes a provision of customs law (Report on the 20th session, 3rd meeting, p. 9; for background, see also the Report on the 3rd session, Annex 1, and the Report on the 16th session, pp. 17 - 19). The objective of this provision is to guarantee, also interest of the railways, that the simplified Community/Common customs transit procedure of the EC/EFTA can continue to be applied.

8. Following the example of Article 4 of the CMR, the Central Office draft of May 1995 had not proposed the use of a uniform consignment note model. In the opinion of the Central Office, that would not have prevented the railways from devising such a uniform model within the framework of one of their international associations. In order to take account of the simplified Community/Common customs transit procedure of the EC/EFTA, which must be maintained at all costs, the Revision Committee thus decided to stipulate the use of a uniform consignment note model (Report on the 4th session, p. 3 and Annex 1). The Revision Committee had at first made provision whereby it would be the responsibility of OTIF or its Secretariat to draw up model consignment notes (Report on the 3rd session, pp. 17-28). That would also have corresponded to the approach of the European Commission, according to which model consignment notes were to constitute an annex to the CIM Uniform Rules.

9. For practical reasons, however, and also in the interest of increased flexibility, the Revision Committee decided, in its 16th session, to leave the responsibility for drawing up “uniform model consignment notes” to the international carrier’s associations (§ 8) (Report on the 16th session, pp. 17-21). These associations must come to agreement with the customers § associations and the authorities which are competent in customs matters, including the EC departments with responsibility for customs questions. In this context, “agreement” does not mean a formal procedure of ap-

proval or acceptance. The customs authorities, however, are free at any time to reject model consignment notes as customs documents. The taking into account of clients' wishes is in the direct interest of the rail transport companies.

10. Whereas the consignor must present a consignment note duly completed in accordance with Article 12, § 1 of the CIM Uniform Rules 1980, Article 6, § 2 does not regulate this question, but follows the example of the CMR, leaving the parties free to regulate this question by common agreement.

11. Article 11, § 4, indent 2 of the CIM Uniform Rules 1980 (original seals intact) has not been reincluded (see No. 5 of the remarks relating to Article 12).

12. Article 5 of the CMR provides that the consignment note be made out in three original copies, signed by the sender and the carrier. Article 5, paragraph 1 of the CMR furthermore expressly stipulates that the first copy be sent to the sender (this is the equivalent of the duplicate of the rail transport consignment note), that the 2nd copy accompany the goods and that the third be kept by the carrier. The Revision Committee did not reinclude this regulation (Report on the 3rd session, p. 26/27). It thus retained the terminology that has been proven and is known in international commerce ("consignment note" and "duplicate of the consignment note"). Insofar as an exact copy of the consignment note, particularly the duplicate of the consignment note, has special legal effects - in particular, this is the case with regard to the right to dispose of the goods and with regard to the conditions for assertion of rights - the text uses the terms "consignment note" (i.e., original of the consignment note) and "duplicate of the consignment note" (for the copy which is handed over to the consignor) in a uniform manner. Only Article 11, § 2 mentions the copy of the consignment note which accompanies the goods in addition to the consignment note and the duplicate of the consignment note. Whereas there is no difference between international carriage by rail and international carriage by road with regard to the functions of the different original copies of the consignment note, the terminology chosen for the CIM Uniform Rules retains the traditional definitions.

13. § 3 has also been aligned to a greater extent with Article 5, paragraph 1 of the CMR. It goes a little further, however, with regard to the replacement of the signature and does not include any reservation in respect of the admissibility, in accordance with national law, of printed signatures or signatures given by seal.

14. The wording of § 4 has been made simpler and clearer than that of Article 11, § 5, indent 2 of the CIM Uniform Rules 1980. No substantive change has been made.

15. The principle of the provision of Article 12, § 1, indent 2 of the CIM Uniform Rules 1980, according to which a consignment note may only relate to the load of a single wagon, has been reincluded. In future, derogations are to be agreed between the consignor and the carrier. The term "consignment" has the same meaning as in the CIM Uniform Rules 1980 (see the 8th Revision Conference Document, Volume II, marg. 3134 and 3135). In terms of transport law - and, as a general rule, also in terms of transport technology - a "consignment" constitutes a unit.

16. In the explanatory report on its draft of May 1995, the Central Office had suggested not reincluding the provisions of Article 12, § 3 of the CIM Uniform Rules 1980. Such matters of detail were to be contractually regulated between the parties to the contract. Belgium indicated that legal provisions concerning the languages to be used prohibit the use of documents in foreign languages unless an appropriate international legal basis prescribes the use of a foreign language. Despite this, the Revision Committee did not settle the question of the languages in which the consignment note must be made out. Since, in future, the international carriers § associations will continue to make out the uniform model of the consignment note, they are also competent to stipulate, if need be, the languages in which the consignment notes must be made out.

17. § 9 replaces the current Article 8, § 4, letter g) of the CIM Uniform Rules 1980. The wording takes account of the experiences of a working group of the International Union of Railways (UIC) dealing with the DOCIMEL project, undertaken in collaboration with the CIT. The text adopted by the Revision Committee is based on the idea of a functional equivalence. The principle of equal legal effects applies to all the functions of the consignment note, although the problem of the evidential value is quoted by way of example since it is in this area that very great difficulties arise in certain national laws.

Article 7
Wording of the consignment note

1. § 1 contains mandatory provisions for the parties to the contract of carriage. However, non-compliance with these provisions does not automatically and in every case result in nullity, but possibly the legal consequences as provided in Article 8.

2. According to § 1, letter a), the consignment note must include the place and the date of its making-out and, according to § 1, letter f), the place of delivery, whereas currently it is necessary to indicate in the consignment note the forwarding station (Article 11, § 1 CIM 1980) and the station of destination (Article 13, § 1, letter a) CIM 1980). The new wording allows more precise information when the goods are remitted for transportation or delivered on connecting routes. This enables a regulation corresponding to Article 28, § 3 of the CIM Uniform Rules 1980 to be omitted from Article 17 (delivery) (Report on the 6th session, p. 4).

3. § 1 of letter p) follows the example of Article 6, paragraph 1, letter k) of the CMR. Firstly, this provision is intended to the consignees that the transportation is subject to the CIM Uniform Rules. Secondly, the principal objective of this provision is to make the private law provisions of the CIM Uniform Rules applicable by the courts of the States which are not Member States of OTIF. This result can be achieved by making these provisions an agreement between the parties, by means of an appropriate statement on the consignment note. However, in consideration of the definition of the scope of application in Article 1, § 2 and in consideration of the rules concerning the place of jurisdiction in Article 46, there remains the possibility that parties in dispute might appeal to courts in States which are not Member States. In view of § 1, letter p), these courts will have to apply the CIM Uniform Rules when the rules of their private international law refer to the material law of a

Member State of the Organisation unless this is prohibited by *public order* or mandatory provisions of the national law of the State in question.

4. Indication of the carrier under obligation to deliver the goods (§ 2, letter a) is necessary if, in accordance with Article 45, § 2, proceedings can be instituted against this carrier, even if the carrier has not received either the goods or the consignment note.

5. In consideration of the importance of seals for the safety of traffic in the Channel Tunnel, the Revision Committee decided to supplement § 2 with a new letter h) reincluding Article 20, § 5, indent 2 of the CIM Uniform Rules 1980 (Report on the 4th session, p. 12).

6. § 3 corresponds to Article 6, paragraph 3 of the CMR and grants greater freedom to the contracting parties than did Article 13, § 3 of the CIM Uniform Rules 1980.

Article 8
Responsibility for particulars entered on the consignment note

1. This provision follows the example of Article 7 of the CMR. This also corresponds to the wishes of the international users§ associations. The consignor is no longer automatically under obligation to make out a consignment note (see No. 10 of the remarks relating to Article 6). The refutable presumption of § 2 has the consequence that, in the case of doubt, it is the consignor who is answerable for incorrect inscriptions.

2. A concomitant fault of the carrier is to be appraised, if need be, in accordance with the general principles of the law.

3. Taking as a basis Article 22 of the CMR, the Revision Committee decided to mention more specifically in this provision (§ 1) the omission of inscriptions prescribed by RID (Report on the 3rd session, pp. 38-40). See also the remarks relating to Article 9.

4. With regard to § 3, see No. 3 of the remarks relating to Article 7.

Article 9
Dangerous goods

Following the examples of Article 22, paragraph 2 of the CMR and Article 13 of the Hamburg Rules, this article, newly inserted by the Revision Committee and approved by the 5th General Assembly, stipulates the consequences *in transport law* if the consignor has omitted the inscriptions prescribed by RID.

Article 10
Payment of costs

1. If there is no provision for an obligation to carry, it seems logical that the responsibility for agreeing the payment of costs should also be left to the consignor and the carrier. An obligation on the part of the railway to grant payment periods and to ac-

cept that the costs be charged to the consignee, who perhaps will not offer the same payment guarantees as the consignor, is meaningful only in connection with the obligation to carry. For this reason, Article 10 replaces Article 15 of the CIM Uniform Rules 1980. The consignor's obligation to pay is regulated only as a subsidiary matter.

2. The agreements relating to the payment of the transport costs or to franking can be concluded in a general fashion by means of tariffs or General Conditions or can be concluded separately in each individual case (see No. 38 of the General Points). In this context, all forms of franking used hitherto can be included, but it is also possible to include other, more far-reaching form, according to the demands of international trade (e.g. Incoterms).

3. With the withdrawal of Article 15 of the CIM Uniform Rules 1980, Article 65 of CIM 1980 (temporary derogations) also becomes null and void. The contractual freedom allows the carriers to take all necessary steps in time to avoid an undesirable accumulation of debts.

4. § 2 adopted by the Revision Committee corresponds to Article 15, § 4, 2nd sentence of the CIM Uniform Rules 1980.

5. See also No. 1 of the remarks relating to Article 17.

Article 11
Examination

1. As in the past, the rail carrier is *authorised*, in principle, to verify at any time whether the consignment corresponds to the inscriptions entered on the consignment note by the dispatcher. This examination can also relate to compliance with the conditions of carriage.

2. The wording "two witnesses not connected with railways" (Article 21, § 2 CIM 1980) has been replaced by "two independent witnesses". These witnesses are to be called upon only in the absence of other provisions in the laws and regulations of the State in which the examination is conducted. In the course of the deliberations, it was clarified that the recourse to witnesses must not complicate the situation of the carrier from the point of view of obligations under public law, particularly the obligations concerning safety of operation (Report on the 4th session, p. 5). The obligation to call upon witnesses is limited to examination of the contents (Report on the 16th session, p. 38).

3. § 3 deals with the conditions in which the carrier is *obliged* to examine. It is necessary to distinguish whether loading is the responsibility of the carrier or of the consignor. According to Article 14, the consignor and the carrier agree on who has responsibility for loading. In the absence of such an agreement, loading is the responsibility of the carrier in respect of packages, whereas the consignor is responsible in the case of wagon loads. Unlike the practice in road transport, loading by the consignor is prevalent in rail transport. This means that there are differences in comparison with the CMR. As indicated by Article 12, § 2 concerning evi-

dential value, it is the carrier who loads the goods who must carry out the following checks on accepting the goods for carriage:

a) the apparent condition of the goods and its packaging

b) the number of packages, their marks and numbers

c) the gross mass or quantity otherwise expressed.

According to Article 22, § 1 of the CIM Uniform Rules 1980, the national law determines the conditions in which the railway must ascertain the gross mass of the goods or the number of packages.

4. There is no provision for an obligation to examine the contents although, according to Article 8, paragraph 3 of the CMR, the sender may require the carrier to carry out this checking. In this respect, the conditions of rail operation differ from those of road transport.

5. As indicated by Article 12, § 3 concerning evidential value, the carrier is only required to check the apparent good condition of the goods and its packaging when loading is undertaken by the consignor. Article 12, § 3, however, grants the consignor loading the goods the right to require that the carrier also examines the statements in the consignment note with regard to

a) the number of packages, their marks and numbers

b) the gross mass or the quantity otherwise expressed

if the carrier has appropriate means of doing this. The CIM Uniform Rules do not make any provision by which the consignor has a right to require even examination of the contents (see No. 4).

6. The Revision Committee refrained from regulating the consignor's acceptance of any reservations on the part of the carrier (Report on the 3rd session, p. 48/49).

Article 12
Evidential value of the consignment note

1. Whether loading is the responsibility of the carrier or of the consignor, the consignment note constitutes a refutable presumption in respect of:

a) the conclusion and contents of the contract of carriage,

b) the taking over of the goods by the carrier, and

c) the apparent good condition of the goods and their packaging.

2. With regard to the number of packages, their marks and numbers, as well as the gross mass or quantity otherwise expressed, it is necessary to differentiate in respect of the evidential value of the consignment note: when loading was performed by the

carrier, the consignment note also serves as evidence of the accuracy of the statements in the consignment note concerning:

a) the number of packages, their marks and numbers

b) the gross mass or the quantity otherwise expressed.

On the other hand, if loading was performed by the consignor, as is the rule in the case of transportation by wagon loads, the statements in the consignment note concerning

a) the number of packages, their marks and numbers

b) the gross mass or the quantity otherwise expressed

only provide a refutable proof of their accuracy if they have been examined by the carrier and if the latter has recorded the result on the consignment note.

3. Since even damaged goods, e.g. motor vehicles, can be transported, the wording "apparent good condition" has been supplemented by the words "condition of the goods and of their packaging indicated in the consignment note" (Report on the 4th session, p. 9).

4. If the consignment note contains a reasoned reservation, the situation with regard to proof is undefined. In principle, reservations must be expressed in sufficiently clear terms to enable third parties to be aware of the circumstances justifying the reservation in an individual case. The wording of § 4 states that it is sufficient for the carrier to make the reservation that he did not have the appropriate means to examine whether the consignment complied with the information written on the consignment note. Article 8 of the CMR does not include this statement.

5. The provisions of Article 11, § 4, indent 2 of the CIM Uniform Rules 1980 (original seals intact) have not been reincluded. On the one hand, the CMR does not include such a provision and, on the other hand, the provision was repeatedly criticised by the users § associations.

Article 13
Loading and unloading of the goods

1. The reference contained in Article 20 of the CIM Uniform Rules 1980 to the regulations in force at the forwarding station has been replaced by a provision according to which the consignor and the carrier agree upon who is responsible for the loading of the goods.

2. In principle, the obligation to unload is also to be regulated between the parties to the contract. The consignee has subsidiary responsibility for unloading.

3. The wording "after delivery" specifies that the unloading of wagon loads is a responsibility of the consignee only if the latter has acceded to the contract of carriage by accepting the consignment note (Report on the 4th session, p. 11).

4. The Revision Committee decided to supplement the Central Office draft of May 1995 by a new provision (§ 2) which reincludes the wording of Article 20, § 3, 1st and 3rd sentences of the CIM Uniform Rules 1980 (Report on the 4th session, p. 11).

5. § 2 of the Central Office draft (Article 20, § 2 CIM 1980), according to which operations for remitting goods to transport are regulated by the provisions in force at the forwarding station, was considered to be superfluous and was consequently withdrawn (Report on the 16th session, p. 39/40). It goes without saying that, even in the absence of such a provision, both the rules of public law and the General Conditions to which the parties to the contract have agreed must be complied with. The loading *instructions* of the RIV are a constituent part of the latter.

Article 14
Packing

1. Article 19 of the CIM Uniform Rules 1980 has been simplified and brought more into line with Article 10 of the CMR. This simplification was made possible because, amongst other reasons, the obligation to carry has been abandoned.

2. The wording of Article 10 of the CMR, “damage to persons, equipment or other goods” allows the carrier to assert claims against the sender/consignor even in respect of damages suffered by third parties. The Revision Committee has not reincluded this statement, on the basis of the idea that the term “all” damages is sufficiently broad to achieve the same legal result (Report on the 4th session, p. 13).

3. On the other hand, the Revision Committee supplemented the Central Office draft of May 1995 by expressly mentioning the case of absence of packaging, as provided in Article 19, § 4 of the CIM Uniform Rules 1980 (Report on the 4th session, p. 13).

Article 15
Completion of administrative formalities

1. §§ 1 and 2 were drafted on the basis of Article 11, first and second sentences, of the CMR. Moreover, the provisions remained more detailed than is the case for carriage by road (cf. Articles 25 and 26 CIM 1980).

2. According to Article 25, § 3, indent 2 of the CIM Uniform Rules 1980, the railway is solely liable, in case of fault, for the consequence of the loss or improper use of documents accompanying the consignment note. Notwithstanding that, its liability is limited to the compensation to be paid in the case of loss of the goods. The Revision Committee decided to retain this limitation of liability, but to increase the carrier’s liability. In future, the carrier can only be discharged from this liability if the damage results from circumstances which could not be avoided by the carrier and the consequences of which the carrier was unable to prevent (Report on the 16th session, p. 43). Consequently, this liability is more severe than that provided by Article 11, paragraph 3 of the CMR.

Article 16
Transit periods

1. In future, the transit period must, in principle, be agreed between the consignor and the carrier. In the absence of an agreement, the maximum transit periods will be applicable by way of secondary regulation. As is currently the case, additional periods of a defined duration may be set although, in accordance with § 1, the agreed transit period can be longer than the maximum transit periods that are applicable by way of secondary regulation. In the deliberations of the Revision Committee, it was noted that "exceptional circumstances" must not be confused with "circumstances which could not be avoided by the railway and the consequences of which it was unable to prevent", but that this term related instead to events not provided for in the General Conditions (Report on the 4th session, p. 20).

2. The second sentence of § 3 guarantees that the carrier cannot unilaterally set additional periods after having concluded the contract of carriage and having agreed the transit period.

3. The international users § associations wished the removal of the suspension of the transit period on Sundays and public holidays. They also wished to shorten the transit periods currently provided for. The Revision Committee did not uphold these wishes (Report on the 4th session, p. 21).

4. Article 33, § 6 allows provision for other methods of compensation when the transit period has been agreed in accordance with Article 16, § 1. Such a provision does appear useful, despite the fact that the new provision concerning the mandatory nature of the CIM Uniform Rules (Article 5) provides for the possibility for the carrier to extend his liability and obligations. It not only dispenses with the investigation of the extent to which such a dispensatory regulation in respect of indemnity actually constitutes an extension of liability, but it also allows limitation of the liability. Such limitations of liability can be in the interest of both parties to the contract of carriage when, for example, the limitation is linked to methods which permit an accelerated settlement of the damage, as is the case in respect of a conventional fine without proof of damage.

Article 17
Delivery

1. According to § 1, the carrier must only deliver the goods against payment of all the debts resulting from the contract of carriage. Hitherto, the railway could only demand the payment of the debts charged to the consignee and, consequently, had to bear the risk of insolvency of the consignor in the event of the latter not having paid the costs in advance.

2. A proposal by which the consignee would be obliged to pay "the charges shown to be due on the *consignment note*" (Article 13, Parag, 2 CMR) instead of "amounts due according to the *contract of carriage*" was rejected (Report on the 4th session, p. 22). In rail transport practice, the consignment note does not contain all the debts in respect of the consignee. In the case of incorrect information written on the con-

signment note, according to the opinion of the Revision Committee, it ought to be possible, using other means of proof, to enforce a claim against the consignee in respect of a debt which is not of an identical amount to that written on the consignment note. Since as far back as the 1952 revision, the extent of the consignee's debt in international carriage by rail has not been based on the consignment note.

3. According to Article 7, § 1, letters e) and f), in the wording adopted by the Revision Committee and approved by the 5th General Assembly, it is necessary to indicate on the consignment note the *place* of taking over of the goods and the *place* of delivery whereas, according to Articles 11 and 13 of the CIM Uniform Rules 1980, the consignment note must include the designation of the forwarding station and the station of destination. Thus, a distinction is no longer made, as was the case according to Article 28, § 1 of the CIM Uniform Rules 1980, between the station of destination and the place of delivery. All depends on the place of delivery to which the carrier contractually accepted transportation and, consequently, liability for the goods. The consignment note serves as evidence of the conditions agreed. The Revision Committee therefore decided not to make provision for a presumption corresponding to that of Article 28, § 3, final sentence of the CIM Uniform Rules 1980 (Report on the 4th session, p. 23; Report on the 6th session, p. 6/7).

4. § 6 corresponds to Article 17, § 3 of the CIM Uniform Rules 1980 (cf. Article 21 CMR). Since this is a matter of a liability in respect of an incidental obligation and not a matter of the carrier's typical liability, the Revision Committee preferred to incorporate this decision into Article 17 instead of inserting it in Chapter III (Report on the 4th session, p. 25).

Article 18
Right to dispose of the goods

1. Following the example of Article 30 and 31 of the CIM Uniform Rules 1980, the consignor or the consignee has the right unilaterally to amend the contract of carriage in certain cases. In the CMR, the term "right of disposal" is used to express this idea. An agreement in an individual case or the General Conditions of Carriage can grant the consignor or the consignee even more extensive rights to amend the contract of carriage unilaterally.

2. Article 31, § 1 of the CIM Uniform Rules 1980 has been replaced by a wording analogous to that of Article 12, paragraph 1 of the CMR.

3. The 5th General Assembly rejected the solution which the Revision Committee had adopted by analogy with Article 12, paragraph 3 of the CMR, according to which the consignee is only entitled to amend the contract of carriage from the point at which the consignment note is made out if the consignor has entered a statement to that effect on the consignment note (Report, p. 69/70). Following the example of Article 31, § 1 of the CIM Uniform Rules 1980, the consignee will therefore have this right unless the consignor has included an indication to the contrary. Despite having thus inverted the principle adopted by the Revision Committee, the General Assembly did not make other textual changes. A "race" can thus develop between the consignor (§ 1) and the consignee (§ 3), in which the consignor is in a stronger position as long

as he has disposal of the duplicate of the consignment note. Amendments must be written on the duplicate of the consignment note and the duplicate must be presented to the carrier (Article 19, § 1).

Article 19
Exercise of the right to dispose of the goods

1. The obligation to present the duplicate of the consignment note is expressly regulated following the example of Article 12, paragraph 5. letter a) of the CMR (cf. Article 30, § 3 CIM 1980).

2. The obligation to compensate the carrier for costs and any damage suffered by the latter is regulated according to the example of Article 16, paragraph 1 of the CMR, since Article 15 of the CIM Uniform Rules 1980 has been withdrawn (cf. Article 32, § 2 CIM 1980).

3. § 3 corresponds to Article 12, paragraph 5, letter b) of the CMR. The wording adopted by the Revision Committee and confirmed by the 5th General Assembly states, however, that the making of subsequent amendments must not only be possible but also reasonable. In addition, it must be lawful, i.e., it must not contravene mandatory provisions and, in particular, customs provisions (Report on the 4th session, p. 30; Report on the 6th session, p. 7).

4. § 4 combines Article 30, § 1, final indent and Article 31, § 1, penultimate indent of the CIM Uniform Rules (cf. Article 12, paragraph 5, letter c) CMR).

5. § 5 provides for the obligation to notify the interested party, by analogy with Article 12, paragraph 6 of the CMR.

6. With regard to §§ 6 and 7, see Article 30, § 3 and Article 32, § 3 of the CIM Uniform Rules 1980. The Revision Committee refused to adapt this provision to Article 12, paragraph 7 of the CMR, which does not provide for limitation of liability. Although § 6 relates to a liability for fault and § 7 relates to a dereliction of the obligations of the carrier, it was considered that the same limitation of liability in the case of loss of goods was justified in carriage by rail “due to the substantial risk that exists in the making of subsequent amendments” (Report on the 6th session, p. 8; Report on the 16th session, p. 62).

7. In § 7, the German wording was adapted to the French wording: the term “consignor” was removed and the conditional sentence was worded in the passive. With regard to the carrier’s liability, only the question of whether the consignee has disposal of the duplicate of the consignment note is important, not whether that duplicate was sent to the consignee by the actual consignor.

8. The amended wording decided upon by the Revision Committee (replacement of “must never exceed” by “shall not exceed”) takes account of Article 36, which provides for the removal of limits of liability in case of qualified fault.

Article 20
Circumstances preventing carriage

This provision has been simplified in comparison with Article 33 of the CIM Uniform Rules 1980. Whereas, according to Article 14 of the CMR, the carrier is obliged to request instructions in all cases, the rail carrier himself decides whether it is appropriate to request instructions or whether it is preferable to carry the goods as a matter of course (Report on the 6th session, p. 10; Report on the 16th session, p. 63).

Article 21
Circumstances preventing delivery

This article corresponds, essentially, to Article 34 of the CIM Uniform Rules 1980. The provisions of Article 34, § 5 of the CIM Uniform Rules 1980 have been reincluded in the new Article 22.

Article 22
Consequences of circumstances preventing carriage and delivery

1. With the exception of § 1 (cf. Article 33, § 1, indent 2 CIM 1980), the new wording essentially follows Article 16 of the CMR.

2. According to Article 16, paragraph 4 of the CMR, the proceeds of the sale must be put at the disposal of the rightful beneficiary, i.e., this is a debt which is payable at the address of the payee and not, as hitherto the case in accordance with Article 33, § 6, indent 2 and Article 34, § 5, indent 2 of the CIM Uniform Rules 1980, a debt which is payable upon summons.

3. The Revision Committee has provided for a new § 6 which allows the carrier to return the goods to the consignor or, if justified, to destroy them at the expense of the latter in the absence of instructions. This provision is intended, in particular, to permit the return of wastes and other non-saleable goods (Report on the 6th session, p. 15).

4. The carrier may not destroy the goods unless this is justified by special circumstances. According to § 2, the carrier must assume responsibility for the safekeeping of the goods. If this proves to be impossible, the goods may be sold (§ 3). Only if the latter likewise proves impossible, the carrier may destroy the goods at the expense of the consignor (Report on the 16th session, p. 66). Any costs associated with the destruction of the goods would have to be reimbursed, if applicable, in accordance with § 1, letter c).

Title III

Liability

Article 23
Basis of liability

1. Hitherto, in international carriage, any railway which had accepted goods for trans-

port could only carry those goods on the route belonging to its network.

2. In future, three main types of carriage of goods by rail are conceivable:

   a) The carrier who concludes the contract with the consignor performs, himself, the carriage from the forwarding place to the destination. If need be, the carrier uses a foreign railway infrastructure.

   b) The carrier who concludes the contract with the consignor does not, himself, perform the carriage over the entire route. For part of the route, the carrier makes use of subsequent carriers, as is the case with the current system. Article 26, in the terms decided by Revision Committee and adopted by the 5th General Assembly, clearly stipulates that the carrier who concludes the contract *and* the subsequent carrier are jointly responsible for the execution of the contract over the entire route. The abandonment of the obligation to carry does, however, oblige the carrier concluding the contract to ensure, generally by means of prior agreements with the subsequent carriers, that the latter adhere to the contract of carriage. This can be achieved either in the form of a general agreement with other carriers or in a given individual case. The current legal obligation that a subsequent carrier (registered on the list of lines) accepts the goods is to be replaced by agreements between the parties.

   c) The carrier who concludes the contract with the consignor uses one or several "substitute carriers" ("sub-contracting carriers"). The "substitute carrier" or "substitute carriers" have no contractual relationship with either the consignor or the consignee (see Article 3, letter b). The contractual carrier is liable towards the consignor and the consignee, in accordance with Article 23 and also, if applicable, in accordance with Article 40, in respect of the *entire* route, subject to his recourse against the "substitute carrier". Moreover, the rightful claimant may also institute legal proceedings against the "substitute carrier" on the basis of the contract of carriage in accordance with Article 27. With regard to the problem of the substitute carrier, see the remarks relating to Article 27.

3. As already stated in No. 28 of the General Points, the principles of the CIM Uniform Rules 1980 have been retained in respect of the period of liability and the basis of liability. The term "taking over of the goods" has been used instead of the term "acceptance of the goods" (Article 36 CIM 1980). This amendment conveys the consensual nature of the contract of carriage and corresponds to the terminology used in the CMR (see also the wording of Article 1, § 1, Article 6, § 4, Article 7, § 1, letter e), Article 9, Article 12, § 1, Article 14, Article 26, Article 30, § 1, Article 45, § 4 and Article 46, § 1, letter b).

4. In accordance with the opinions expressed in the course of the study (see No. 14 of the General Points) by both the States and the interested international organisations and associations, the Central Office draft of May 1995 had provided that the carrier could not invoke defects of the rail track or of the safety installations in order to release himself from his liability. This was also to be applicable in cases where the carrier does not himself manage these installations. The carrier bears responsibility on the basis of a principle of pure causality.

5. Since there is no contractual relationship between a third-party infrastructure manager and the parties with whom the carrier has concluded contracts (consignor or consignee), the latter could, if need be, instigate tort or quasi-tort proceedings against the manager of the infrastructure. Such proceedings would be regulated by the national law applicable in each individual case and could entail higher compensatory damages that those provided for according to the CIM Uniform Rules.

6. In order to prevent these undesirable legal consequences, Article 40 qualifies the infrastructure manager *ex lege* as "other person whose services the carrier makes use of for the performance of the carriage" in the sense of Article 40 of the Central Office draft (Article 50 CIM 1980). In this case, Article 41 (Article 51 CIM 1980) will be applied, guaranteeing that all proceedings against this "other person" can only be brought subject to the conditions and limitations of the CIM Uniform Rules.

7. In order to achieve as clear a regulation as possible, Article 23, § 1 states that the carrier is liable for damage "whatever the railway infrastructure used".

8. Article 17, paragraph 5 of the CMR provides for the pro rata liability of the carrier when damages have been caused partly by circumstances for which the carrier is answerable and partly by circumstances for which he is not answerable. The principle of pro rata liability in such cases is indicated by the text which has been adopted by the Revision Committee and confirmed by the 5th General Assembly, since in §§ 2 and 3 the term "if" has been replaced by the words "to the extent that" (Report on the 4th Session, pp. 31, 33 and 34).

9. The international users § associations wished for the provision of an exception, for combined transport, in respect of the ground of privileged exoneration of carriage in open wagon. This exception is currently contained in the Additional Uniform Rule (DCU) to Article 36, § 3, letter a) of the CIM Uniform Rules 1980. No particular problem arises in the case of consignments carried in closed intermodal loading units or in road vehicles which are closed. In this case, the goods have the same protection as in closed wagons. In the case of loading units which are "covered" only by tarpaulins, the questions remains disputed. The international users § associations also wished for an exemption for the carriage of the loading units themselves. This was rejected by the Revision Committee (Report on the 4th session, p. 33).

10. Nor did the Revision Committee take any action concerning the argument that, in road transport law, vehicles "covered" by tarpaulins are not considered as open vehicles. On the contrary, it adopted a supplement to Article 24, § 3, letter a) according to which, in respect of liability, carriage in open wagons with tarpaulins will be classed as carriage in open wagons (Report on the 4th session, p. 33).

11. The ground of privileged exoneration of Article 36, § 3, letter d) of the CIM Uniform Rules 1980 (defective loading) is no longer included, following the example of Article 17 of the CMR (Report on the 4th session, p. 33). The wording of letter c) was adapted to that of Article 17, paragraph 4, letter c) of the CMR.

Article 24
Liability in case of carriage of railway vehicles as goods

1. Within the framework of the work relating to a new law on wagons, the Central Office had prepared a draft of a new Chapter IVa of the CIM Uniform Rules (special provisions of the transport law) (see General Points, Nos. 11, 20-23 of the Explanatory Report on the CUV Uniform Rules). The latter regulated the case of "special" goods being remitted for carriage, i.e., wagons running on their own wheels. Moreover, special provisions were to be applicable when large containers are remitted for carriage and when their nature, as *means* of transport, justifies such special provisions (cf. the current RICo).

2. With regard to a new Chapter IVa of the CIM Uniform Rules concerning the special provisions for the carriage of wagons and large containers as goods, none of the States represented at the twelfth session of the Revision Committee initially considered it necessary to create such provisions (Report on the 12th session, pp. 38-40).

3. The CIM Uniform Rules which are in force and the new CIM Uniform Rules, however, do not exclude the possibility whereby vehicles running on their own wheels constitute, as such, whether loaded or empty, the subject-matter of the contract of carriage (cf. also Article 5, § 1, letter b) of the CIM Uniform Rules 1980). Since the new CIM Uniform Rules no longer make provision for an obligation to carry, the rail transport companies are free to conclude such contracts or not. The delivery of passenger carriages or new goods wagons does not in any case constitute the subject-matter of a contract of use within the meaning of the CUV Uniform Rules since, in this case, the carriages or wagons do not constitute a means of transport, but rather the object of carriage. This also applies to all carriage in the case of the transfer of empty wagons, irrespective of knowing – in advance - whether a contract relating to carriage of goods by means of this wagon has been concluded or not.

4. Liability according to the CIM Uniform Rules is more severe than that according to the CUV Uniform Rules. According to Article 23 of the CIM Uniform Rules, it is a matter - as according to Article 36 of the CIM Uniform Rules 1980 - of a strict causal liability whereas, according to Article 4 of the CUV Uniform Rules, it is a matter of liability for fault, with reversal of the burden of proof.

5. For this reason, in the sixteenth session, the Revision Committee introduced some special provisions into the CIM Uniform Rules. These relate to liability in the carriage of rail vehicles running on their own wheels and consigned as goods, as well as to compensation in case of loss or damage of a rail vehicle, an intermodal transport unit or their parts (Article 30, § 3 and Article 32, § 3 CIM, Report on the 16th session, pp. 69-71, 79, 82/83).

6. The 5th General Assembly supplemented this regulation by a provision concerning liability where the transit period is exceeded (Report, p. 74).

Article 25
Burden of proof

1. §§ 1 to 3 correspond to Article 37 of the CIM Uniform Rules 1980.

2. The exceptions provided in the Central Office draft of May 1995 in accordance with § 4 (wagon fitted out to protect the goods from certain risks, particularly refrigerated wagons) and § 5 (live animals), which corresponded to Article 18, Parags. 4 and 5 of the CMR, have not been reincluded by the Revision Committee (Report on the 4th session, p. 37).

Article 26
Successive carriers

1. As in the past, provision is made for a system allowing carriage performed by several subsequent contractual carriers constituting a community of transport and liability, on the basis of a single contract of carriage.

2. The Revision Committee has combined the two existing paragraphs to form a single paragraph and has made some amendments which better express the idea that the taking over of the goods with the consignment note is a condition in order that the subsequent carrier is part of the community of carrier's liability. The substitute carrier, on the other hand, does not have any contractual relationship with the consignor or the consignee (Report on the 4th session, p. 35).

3. Article 26 presumes the taking over of the goods and of the consignment note and thus imparts to the accession of the subsequent carrier the character of an actual contract. This departure from the consensual contract model according to Article 6 corresponds to the situation according to Article 4 and Article 34 of the CMR. It can be justified by liability considerations: if the subsequent carrier does not take over of the goods because the latter were lost during a preceding partial route, there is no reason why that carrier should be jointly liable for the loss. The situation according to the CIM Uniform Rules 1980 is different. In that case, because of the system of registered lines and the obligation to carry, it is clearly defined from the start which carrier is to be the final carrier. In accordance with the principle of the consensual contract, Article 45, § 2 of the CIM Uniform Rules creates a balance by providing that legal proceedings can be instituted against the subsequent carrier under obligation to deliver the goods ("the final carrier") if that carrier is mentioned, with his agreement, on the consignment note. According to jurisprudence (Judgement of the Supreme Court of Appeals of France of 3.5.1994, published in the European Transport Law 1995, p. 685) and prevailing doctrine, the "final carrier" according to Article 36 of the CMR is, on the contrary, the carrier who has actually acceded to the contract by the acceptance of the goods and the consignment note.

Article 27
Substitute carrier

1. The Central Office draft of May 1995 had not regulated the liability of the "substitute carrier" ("sub-contracting carrier"). With regard to the reasons, see Nos. 2 and 3

of the remarks relating to Article 25 (Annex 2 to the circular letter of 5.5.1995; 1995 Bulletin, p. 142). The Revision Committee, however, decided by a clear majority to regulate this institution which is known in air and maritime transport (Report on the 4th session, p. 36). The text which was adopted essentially follows Article 10 of the Hamburg Rules. The "substitute carrier" is answerable only in respect of the carriage performed by him (partial route) whereas the subsequent carriers are answerable in respect of the carriage over the entire route.

2. See also No. 3 of the remarks relating to Article 3.

Article 28
Presumption of loss or damage in case of reconsignment

Article 38 of the CIM Uniform Rules 1980, in the terms in force since 1 January 1991, has been reincluded with minor editorial amendments. The SMGS still does not contain any identical legal presumption in favour of the CIM Uniform Rules, although such a supplement had been envisaged in 1987.

Article 29
Presumption of loss of the goods

1. Essentially, Article 39 of the CIM Uniform Rules 1980 has been reincluded. The reference to § 4 has been stated in accordance with the terms of Article 20, paragraph 4 of the CMR.

2. By analogy with Article 17, § 2 (see No. 2 of the remarks relating to Article 17), goods which have been found again must be restored to the person entittled against payment of the costs resulting from the contract of carriage (and refund of compensation received).

Article 30
Compensation for loss

1. This provision corresponds to Article 40 of the CIM Uniform Rules 1980. In consideration of the loss in value of the Special Drawing Right (SDR) since 1980, the Revision Committee decided, in principle, to increase the compensation per missing kilogram of gross mass, without setting a precise amount for the time being. It has instructed the Central Office to prepare a document for the information of the General Assembly which is to indicate the determining criteria for the value of the SDR (Report on the 6th session, p. 20). The Committee was perfectly aware of the fact that the limit amounts for other modes of transport are significantly lower than those provided in rail transport law. It nevertheless considered that that represented a competitive advantage of rail as a mode of transport (Report on the 6th session, p. 19).

2. From data available to the Central Office, it proved necessary to assume a loss of approximately 65% in the real value of the SDR for the period from May 1980 to January 1999. Even a 50% increase in the limit amount only corresponds to an amount (25.5 SDR) which represents approximately three times the maximum

amount of liability of the CMR (8.33 SDR). The Central Office suggestion to set the maximum amount of liability at 25 SDR was taken up by Lithuania, since an increase of the limit amount would have led to an alignment with the SMGS, which does not provide for maximum amounts of liability. After the CIT representative declared that the rail transport companies had no objection to an increase not exceeding the loss in real value of the DTS, the 5th General Assembly adopted this proposal by Lithuania with the necessary two-thirds majority (no votes against, 9 abstentions; Report, p. 75).

3. The General Assembly initially rejected a proposal, submitted by Spain, to resume the discussion (Report, p. 76). On the other hand, a second proposal for resumption, submitted before the final vote, was adopted. Upon proposal by Spain, supported by Belgium and Bulgaria, the 5th General Assembly then decided with the necessary two-thirds majority (20 votes in favour, 4 votes against and 4 abstentions) to retain the maximum liability amount of 17 SDR (Report, pp. 75-79). By this decision, the 5th General Assembly supported the following arguments:

- It is appropriate to differentiate between the adaptation of the maximum liability amounts in goods traffic and that in passenger traffic. Full compensation of the loss of real value is justifiable in the area of passenger traffic, but not in that of goods traffic.

- In view of the economic differences in the Member States of the Organisation, an increase in the maximum liability amount is unacceptable for the railways of certain States.

- For the rail companies, an increase in the maximum liability amount to three times that applicable in international road traffic would result in a deterioration of competitive conditions. As a general rule, the consignor insures his goods against damage caused during carriage. This would involve double insurance as well as an increase in insurance premiums. Due to the insurance cover, the market does not honour an increase in the maximum amounts of liability.

- The maximum amount of liability, of 17 SDR, was also retained in May 1999 in the revision of the Warsaw Convention.

- Within the framework of the reform of the transport law in Germany, the maximum amounts of liability have also been harmonised to the level of the amounts applicable in road transport law.

4. On the other hand, the 5th General Assembly did not accept the following arguments:

- The carrier must be answerable for damage caused, if only to safeguard his good reputation.

- Limit amounts of liability which are higher than in carriage by road could represent a competitive advantage of rail.

- It is not a matter of increasing the maximum amounts of liability, but only of compensating, at least partially, the loss of real value that has occurred.

- In the determination of the maximum amount of liability within the framework of the revision of the Warsaw Convention, provision was made to adapt the amount to the loss of real value automatically, every five years, which will not be the case according to the CIM Uniform Rules.

5. In its 16th session, the Revision Committee had introduced § 3, in order to apply, in respect of compensation in case of loss in these special cases, the same principles as those applicable in accordance with Article 4 of the CUV Uniform Rules (cf. also Article 12, § 2; Report on the 16th session, p. 71). Furthermore, in the 20th session, the Revision Committee had extended this provision to intermodal transport units (cf. Article 14 RICo; Report on the 20th session, 3rd meeting, p. 13/14). In its 22nd session (1 - 4.2.1999), the Revision Committee supplemented § 3, since, in the case of loss of a vehicle, the date or place of the loss is not always known. In such a case, the usual value on the date and at the place of taking over is determinant.

6. The wording of § 4 was amended to clarify the relation with carriage as a condition for the obligation of restitution (Report on the 6th session, p. 20/21). With regard to the restitution of customs duties and excise duties, the result of the discussions within the Revision Committee was that the excise duties arising from the loss of goods (e.g. in the case of theft) would also have to be refunded provided that they were “already settled”. It would then be a matter of restitution of indirect damage (Report on the 16th session, p. 80; Report on the 20th session, 3rd meeting, p. 14).

7. The 5th General Assembly returned to the problem of excise duties, the restitution of which it wished to exclude expressly in the context of Article 30, § 4. It is proper to make a distinction between customs duties and excise duties. In customs procedure, rail companies involved in carriage have the status of “obliged principal” and are thus jointly and severally liable with the consignor or the consignee in respect of the customs authorities. In the case of irregularity or infringement, they are obliged to pay customs duties. They are therefore obliged to refund them, after the example of the carriage charge. Excise duties, on the other hand, relate to goods which, in the EC for example, come within a specific fiscal statute. They can only be produced, processed, held and consigned by “approved bonders”. These bonders are obliged to furnish an “obligatory guarantee” to allow these goods to circulate between such fiscal warehouses. In terms of excise, the rail carrier does not have the status of “obliged principal” in respect of the fiscal authorities. The wording decided upon by the 5th General Assembly is thus intended to exclude the obligation to refund such excise duties, this restitution having been considered to be indirect compensatory damages (Report, pp. 79-84 and 181/182).

Article 31
Liability for wastage in transit

This provision corresponds to Article 41 of the CIM Uniform Rules 1980, in the version of 1 January 1991. It is a *lex specialis* of Article 23, which has its basis in the nature of the

goods carried as well as in the duration of certain carriage (Report on the 6th session, p. 22; Report on the 16th session, p. 81/82).

Article 32
Compensation for damage

This provision corresponds to Article 42 of the CIM 1980. The special provision of § 3 in the case of damage to a railway vehicle running on its own wheels and consigned as goods was introduced in the sixteenth session of the Revision Committee. Instead of the depreciation, it is the costs of repair, excluding any other damages, which must be paid (Report on the 16th session, p. 83). In its 20th session, the Revision Committee extended this provision to intermodal transport units and their parts (Report on the 20th session, 3rd meeting, p. 15 ; see also Article 14 RICo).

Article 33
Compensation for exceeding the transit period

1. This provision corresponds to Article 43 of the CIM Uniform Rules 1980, in the terms of the 1990 Protocol. The Revision Committee deliberately retained a maximum amount of compensation which is much higher that that provided for in Article 23, paragraph 5 of the CMR (*four times* the carriage charge instead of the *single* carriage charge!) (Report on the 20th session, 3rd meeting, p. 15/16).

2. The drafting of § 6 has been improved. If the transit periods as provided for in Article 16 are exceeded, the rightful claimant may choose between the agreed compensation and that provided in accordance with §§ 1 to 5.

3. See also No. 4 of the remarks relating to Article 16.

4. Article 33 is also applicable with regard to compensation in case of exceeding of the transit period for railway vehicles running on their own wheels and consigned as goods.

Article 34
Compensation in case of declaration of value

1. The provisions concerning declaration of value have been taken from Article 24 of the CMR, with the exception of the disputed text concerning the payment of a price supplement, to be agreed (Report on the 6th session, p. 28; Report on the 20th session, 3rd meeting, p. 16/17). The parties to the contract can agree the payment of a price supplement.

2. Contrary to the case with regard to declaration of interest upon delivery, the only amount due is the amount of damage, proven by the beneficiary, according to the value of the lost or damaged goods at the place and at the time of taking over.

Article 35
Compensation in case of declaration of interest in delivery

The provisions of Article 16, § 1 and those of Article 46 of the CIM Uniform Rules 1980 have been combined in a single article (cf. Article 26 CMR). In this case, likewise, the parties to the contract can agree the payment of a price supplement (Report on the 6th session, p. 29).

Article 36
Loss of right to invoke the limits of liability

This provision corresponds to Article 44 of the CIM Uniform Rules 1980, in the terms of the 1990 Protocol.

Article 37
Conversion and interest

The provisions of Article 47 of the CIM Uniform Rules 1980 have been reincluded, with the exception of § 3 concerning the minimum lump sum.

Article 38
Liability in respect of rail-sea traffic

The list of additional grounds for exemption from liability has been aligned to the Hamburg Rules and will in future include, apart from the grounds of "loading of goods on the deck", only the grounds of "fire" and "saving or attempting to save life or property at sea", as well as "perils, dangers and accidents of the sea". "Nautical fault" has not been reincluded as grounds for exoneration. Liability in rail-sea traffic is thus more severe than that according to the Brussels Convention of 1924 and the Hague-Visby Rules of 1968 (Report on the 6th session, p. 32/33).

Article 39
Liability in case of nuclear incidents

Article 49 of the CIM Uniform Rules 1980 has been reincluded as it stands.

Article 40
Persons for whom the carrier is liable

1. In the revision work, there was felt to be a need to regulate, if possible, all the "carrier-client-infrastructure manager" legal relationships in a uniform manner. As a consequence, the manager of the infrastructure becomes the auxiliary of the carrier by virtue of a legal definition or legal fiction. The purpose of this was to prevent the client from successfully taking legal proceedings against the infrastructure manager in accordance with the national law (i.e., within the limitations provided for in the CIM Uniform Rules). Otherwise, the scope of the carrier's liability on the one hand could differ from the scope of liability of the infrastructure manager (Report on the 4th session, p. 38).

2. Since the notion of the French term "agents" does not cover all the categories of persons for whom the carrier would be liable, the French wording has been

aligned to the German text („agents ou des autres personnes“); the title of this article has been adapted in both languages (“persons for whom the carrier is liable”).

3. The provision of Article 50, § 2 of the CIM Uniform Rules 1980, favouring the rail carrier, has been removed. The fact that the carrier is not liable, even in the case of fault on the part of his agents, appeared to the Revision Committee to be difficult to defend from the point of view of legislative policy (Report on the 4th session, p. 38; see also the remarks relating to the Central Office draft of May 1995).

4. In accordance with the CMR, the Hamburg Rules and the Warsaw Convention, Article 40 states that agents and other persons must act “within the scope of their functions”.

Article 41
Other actions

1. Article 51 of the CIM Uniform Rules 1980 has been reincluded. A proposal by Germany, seeking to specify the wording “in all cases in which these Uniform Rules apply” in respect of the rights of third parties, was rejected (Report on the 20th session, 3rd meeting, p. 21-23). The Revision Committee was of the opinion that the wording in force conveyed sufficiently the object of this provision.

2. The object of Article 41 is to limit extra-contractual proceedings, including those of third parties, in order to prevent the legal system for liability in respect of contractual proceedings from becoming devoid of meaning and, for this reason, to protect it in a general manner in cases in which unlimited proceedings could be instituted against a party to the contract on an extra-contractual basis. The typical case is that of the owner of the goods who is not himself the consignor, but a third party in respect of the contract of carriage. In this case, Article 41 can be invoked against the owner of the goods, otherwise the latter could still appeal to a third party as formal consignor in order to protect himself from unlimited extra-contractual proceedings in respect of the carrier (see Report on the 20th session, 3rd meeting, pp. 21-23).

Title IV

Assertions of rights

Article 42
Ascertainment of partial loss or damage

1. The Revision Committee rejected a proposal to replace the current provisions by a more flexible procedure, following the model of Article 30 of the CMR (Report on the 6th session, p. 36; Report on the 20th session, 3rd meeting, pp. 23-26). See also Article 47, extinction of proceedings against the carrier.

2. The Revision Committee did not accept a proposal aimed at including the infrastructure manager in the compilation of the ascertainment report. The infrastructure manager is considered as a person whose services the carrier makes use of for performance of transportation. It is not a matter for the CIM Uniform Rules to regulate the relations between the carrier and his auxiliaries (Report on the 6th session, p. 37).

Article 43
Claims

This article has been reincluded from Article 53 of the CIM Uniform Rules 1980, but with editorial adaptations. The Revision Committee rejected a proposal which sought to replace these provisions with a regulation identical to that in Article 30 of the CMR (Report on the 6th session, pp. 37-39; Report on the 20th session, 3rd meeting, p. 26).

Article 44
Persons who may bring an action against the carrier

Apart from editorial amendments, this article has been reincluded from Article 54 of the CIM Uniform Rules 1980. The Revision Committee had refused to withdraw this article in accordance with the CMR system, according to which the right to institute legal proceedings depends on the existence of a substantive right. Article 44, in the terms approved by the Revision Committee and approved by the 5th General Assembly, has the advantage of legal clarity and guarantees that the right to bring an action belongs to the person who has the right of disposal of the goods. The right of the consignor or of the consignee to bring an action is exclusive and alternative, i.e., it only belongs to one or the other. Legal succession or the assignment of debts is regulated by the national law (Report on the 6th session, p. 41; Report on the 20th session, 3rd meeting, p. 27).

Article 45
Carriers against whom an action may be brought

1. Article 36, final half-sentence, of the CMR, which allows plurality of legal proceedings, has not been reincluded. The reason for this difference between the CMR and the CIM was the problem of the solvency of the various road carriers, which did not appear to be as guaranteed as the solvency of the railways.

2. Since it is possible to understand the term “final carrier” to mean the carrier who is the last to accede to the contract of carriage by accepting the consignment note and the goods (see Article 26), and not the carrier who, according to the plan of the carrier who concluded the contract, would have been under obligation to deliver the goods to the consignee (Judgement of the Supreme Court of Appeals of France of 3.5.1994, see No. 3 of the remarks relating to Article 26), it is necessary for the purpose of passive legitimisation that this carrier be entered on the consignment note (see No. 4 of the remarks relating to Article 7).

3. Contrary to the provision of Article 45 of the CIM Uniform Rules, according to Article 36 of the CMR the rightful claimant may bring an action against several carriers. The road carriers are not jointly interested obliged parties in respect of the

proceedings. Judgements which nonsuit the plaintiff thus do not develop effect in favour of the other carriers.

4. The Revision Committee discussed extensively the question of whether the substitute carrier must be expressly mentioned in this provision or whether the expression "carrier" is sufficient to allow direct proceedings against the substitute carrier. In the interest of terminological clarity B carrier intended always to mean only the contractual carrier (Article 3, letter a) B Article 45 was supplemented (§ 6) by a provision analogous to that of Article 27, § 2 (Report on the 6th session, p. 44/45).

5. See No. 3 of the remarks relating to Article 3.

Article 46
Forum

1. Article 46, § 1 clearly indicates that the CIM Uniform Rules have primacy over the provisions of the European Convention concerning judicial competence and the enforcement of judgements in civil or commercial matters. Article 46 does not contain any reservation in favour of the provisions relating to the place of jurisdiction which are contained in agreements between States or in concessions.

2. The criteria concerning the applicable law, of letters a) and b), have been taken from Article 31, paragraph 1 of the CMR. The terms used for "branch or agency" ("Zweigneiderlassung oder Geschäftsstelle") correspond to the criteria concerning applicable law used in Article 5, No. 5 of the European Convention on jurisdiction and the enforcement of judgements in civil or commercial matters. With regard to interpretation, the jurisprudence of the CJEC can be considered as *ratio legis*. According to this jurisprudence, the notion of branch, agency or any other establishment implies "a centre of operations which is outwardly manifested in a durable manner as the extension of a main establishment, so provided with a management and material equipment as to be able to negotiate business with third parties in such a manner that the latter, while being aware that a possible privity will be established with the main establishment, whose main offices are located abroad, are exempted from going directly to the latter, and can transact business at the centre of operations constituting its extension" (CJEC, Judgement of 22.11.1978 in the case 33/78).

3. § 2 corresponds to Article 31, paragraph 2 of the CMR and regulates the objection of lis pendens and of the possessing of force of law (res iudicata).

Article 47
Extinction of right of action

Article 57 of the CIM Uniform Rules 1980 has been reincluded. The Revision Committee did not support a proposal which sought to repeat the system of Article 30 of the CMR, according to which the acceptance of the goods without reservation constitutes only refutable proof that the carrier has received the goods in the condition described in the consignment note (Report on the 6th session, p. 47; Report on the 20th session, 3rd meeting, p. 31). The Revision Committee was of the opinion that the provisions of § 2 were sufficient to protect clients.

Article 48
Limitation of actions

1. Article 58 of the CIM Uniform Rules 1980 has been broadly included, but with simplification of the casuistic rules of § 2 concerning the commencement of limitation.

2. The Revision Committee rejected a proposal to make the periods the same as those in Article 32 of the CMR, i.e., every three years instead of every two years in the case of qualified fault (Report on the 6th session, p. 50; Report on the 20th session, 3rd meeting, pp. 31-33).

Title V

Relations between Carriers

Article 49
Settlement of accounts

§ 1 repeats Article 59, § 1 of the CIM Uniform Rules 1980, § 2 repeats Article 35, paragraph 2 of the CMR (evidential value of the consignment note in the relationship in respect of subsequent carriers).

Article 50
Right of recourse

This provision corresponds to Article 60 of the CIM Uniform Rules 1980.

Article 51
Procedure for recourse

1. §§ 1 to 3 correspond to §§ 1 to 3 of Article 62 of the CIM Uniform Rules 1980.

2. § 4 concerning competence is based on Article 31, paragraph 1, letter a) of the CMR.

3. § 5 corresponds to Article 63, § 2 of the CIM Uniform Rules 1980.

4. Following the example of the CMR, the Central Office draft of May 1995 had abandoned the provisions of Article 62, § 5 of the CIM Uniform Rules 1980. Since there remains the possibility that that could entail a delay in the compensation procedure and thus an impairment of the situation of rightful claimants asserting their rights against a carrier, the Revision Committee decided, in the second reading, to introduce in § 6 a provision corresponding to Article 62, § 5 of the CIM Uniform Rules 1980 (Report on the 20th session, 3rd meeting, p. 35).

Article 52
Agreements concerning recourse

This solution corresponds, in principle, to Article 64 of the CIM Uniform Rules 1980 (cf. also Article 40 CMR).

Regulation concerning the International Carriage of Dangerous Goods by Rail (RID)

Explanatory Report [8]

General Points

1. The first international regulation of the carriage of dangerous materials and objects was contained in § 1 of the Regulatory Provisions for the Implementation of the Bern International Convention of 14 October 1890 concerning the Carriage of Goods by Railway, and their Annex 1. The provisions of that Annex concerned only conditions of contract of carriage imposed on the consignor of the dangerous materials and objects concerned. The objective was to maintain the safety of persons and property in rail operation. The legal consequence, in the case of non-compliance with the conditions, consisted in the possibility of the railway refusing carriage, despite the obligation to carry which existed in principle. According to the judicial situation at that time, however, the railway was not prohibited from carrying such goods. Rather, at the time of conclusion of a contract of carriage, it could require the consignor to comply with his obligations under civil law ensuing from these special conditions of carriage and, if need be, claim compensatory damages.

2. In the course of the revisions of the Regulation concerning the International Carriage of Dangerous Goods by Rail (RID), the emphasis has changed, more or less unnoticed: a regulation with a content that came under private law has changed to become safety regulations which are now, instead, classified as regulations under public law.

3. An essential problem of the RID system before the first restructured version in 2001 lay in the fact that, according to marginal note 1, indent (1), it constituted the implementing regulation of Article 4, letter d), and of Article 5, § 1, letter a) of the CIM Uniform Rules 1980. The scope of application of RID thus depended, in principle, on the scope of application of the CIM Uniform Rules. From this, there resulted three important formal restrictions:

   - RID applied only to international carriage.
   - It applied only to carriage on lines included in the CIM list.
   - Carriage had to be performed on the basis of a CIM contract of carriage covered by a CIM consignment note.

   Safety regulations which serve to protect persons, the environment and goods should, however, be applicable irrespective of such formal restrictions. Now, on the basis of Directive 2008/68/EC [9] on the inland transport of dangerous goods (RID/ADR/ ADN

8 The articles, paragraphs, etc. which are not specifically designated are those of the RID; unless otherwise evident from the context, the references to the reports on sessions not specifically identified relate to the sessions of the Revision Committee.

9 Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods published in the Official Journal of the European Union L 260, 30 September 2008, p. 13.

Framework Directive), the Member States of the European Union (EU) must also apply RID to the carriage of dangerous goods by rail in national traffic and to carriage between the Member States, this being irrespective of a CIM contract of carriage and the transport document used.

4. Substantial difficulties have arisen from the legal structure of RID in force before COTIF 1999 in the context of the carriage of empty tank-wagons, empty tank-containers as well as empty wagons and empty small containers for bulk goods, these uncleaned wagons and containers, belonging to the railway, having contained dangerous goods. Such carriage was performed by the railway without the conclusion of a CIM contract of carriage and was thus not subject to RID. This problem was resolved transitionally by an additional uniform rule of railways (Additional Uniform Rule No. 2, of railways, to Article 28 CIM 1980), a provision which imposes on the consignee of the preceding carriage with load certain obligations in order to guarantee safety in the subsequent carriage without load.

5. The CIM contract of carriage commences with the acceptance of the goods for transport with the consignment note and ends with the delivery of the goods. The loading and unloading activities are frequently performed outside this timeframe, particularly in the carriage of wagon loads. The typical dangers associated with the carriage of dangerous goods are thus not limited by the duration of the contract of carriage. The obligations which now ensue from RID no longer apply solely to the parties to the contract of carriage (consignor, consignee and carrier). A concrete example of this are the stipulations relating to gas return (gas compensation pipe), which create obligations for the filler and the unloader, even when the latter are not directly involved as a consignor or consignee in the contract of carriage.

6. From the legislative point of view, the RID which was in force up to 31 December 2000 was inadequate. This was because, as a general rule, it did not clearly indicate the persons to whom the various obligations applied. In the interest of safety, it was desirable to stipulate more clearly in RID itself to whom the various obligations contained in RID are applicable.

7. On the basis of a detailed presentation of the areas in which the constitution and current methodology of RID give rise to difficulties, in 1992 the Central Office conducted a survey of the Member States, seeking their opinion with regard to a possible restructuring of RID. Of a total of 20 States which responded, 17 declared themselves in favour of the restructuring proposed by the Central Office. On the basis of this result, the Committee of Experts on the Carriage of Dangerous Goods by Rail (RID Committee of Experts), in its 29th session (22 – 26 March 1993), instituted a working group under the chairmanship of Austria. In its 6th session (28 – 31 October 1996), this working group completed the 2nd reading of the basic document of 10 September 1993 compiled by its chairman in agreement with the Central Office. The result of this work, including the explanatory report on it, was submitted to the 4th General Assembly (Athens, 8 – 11 September 1997) as an information document (General Assembly) AG 4/3/3 of 1 July 1997. It was noted by the General Assembly (Final Document, No. 7.2).

8. The basic concept provided for the creation of a separate Appendix C to COTIF (= RID), this Appendix C to be composed of both a "legal" section and a "technical" annex. The Technical Annex was to be constituted in accordance with the results of the work aimed at restructuring RID/ADR in a user-friendly form.

9. The objective of the restructuring of the Technical Annexes of RID and of the European Agreement on the International Carriage of Dangerous Goods by Road (ADR) was to standardise the structure both of the provisions which are common to all modes of transport and of the provisions which are specific to the various modes of transport, in a form which facilitates users' comprehension and application of the provisions for the carriage of dangerous goods.

10. The working group ascertained that it would be necessary to provide for uniform provisions in RID and in ADR, not only with regard to the Technical Annexes, but also with regard to the legal section, particularly for the listing of the obligations of the parties involved. Since the inclusion in the actual ADR of the content of the new Appendix C to the COTIF devised by the working group would have entailed an amendment of ADR which would have required ratification, the chairman of the working group submitted appropriate proposals by Austria to the RID/ADR Joint meeting in January 1997. These proposals consisted in including in the general part of the Technical Annex, not subject to ratification, from both ADR and RID, a significant portion of the restructured legal provisions of the future Appendix C, particularly the definitions and the provisions relating to the obligations of the involved parties. The RID/ADR Joint meeting (17 – 21 March 1997) approved, in principle, this manner of proceeding. The proposal by Austria was adapted to the legal framework of ADR and of the Convention on the Contract for the International Carriage of Goods by Road (CMR), and to the structure of the Annexes of ADR, resulting in a reediting of RID texts drafted by the working group. This approach was also supported by the European Commission because it offered the advantage of being able to include in the Appendices to the RID/ADR/ADN Framework Directive, by this means, the new, restructured legal provisions and technical provisions.

11. The problem of amending the common provisions of the general part of the Technical Annexes of RID and ADR by the simplified procedure, i.e., in the case of RID, by decision of the RID Committee of Experts, as has been the case hitherto and, for the Technical Annexes of ADR, in accordance with its Article 14, is a problem which arises in essentially the same way for the two Regulations: insofar as an amendment of these provisions by the simplified procedure is acceptable to the Member States in respect of ADR, this should also be possible in respect of the parallel provisions of RID.

12. The legal provisions of a general nature which have remained from the original draft of a new Appendix C, devised by the Working Group (General Assembly document AG 4/3.3 of 1 July 1997), were examined by the Revision Committee in the 17th session (4 May 1998). They were initially adopted on an indicative basis only, due to the fact that a quorum had not been achieved (18 of the 39 Member States of OTIF were represented). From the content point of view, these provisions represent the strict minimum for giving a legal basis to the "Technical" Annex of Appendix C.

13. In the 19th session, the Revision Committee decided, in the deliberations relating to COTIF, Basic Convention, that the RID Committee of Experts would be competent not only with regard to decisions relating to the "Technical" Annex to Appendix C, but also with regard to the proposed amendments of Appendix C itself (Report, p. 77). This is not without importance in view of Article 2 (exemptions) (see No. 3 of the remarks relating to Article 2). The text adopted by the Revision Committee nevertheless provides that one third of the States represented in the Committee may request that the proposed amendments be submitted to the General Assembly for decision (Article 33, § 5 COTIF). See also the remark in No. 19.

14. In the 20th session (1. September 1998), in the 2nd reading, the Revision Committee, with the necessary quorum, completed the deliberations concerning the new Appendix C (RID – without the "Technical" Annex).

15. Despite the agreement in principle by the RID/ADR Joint meeting in March 1997 to establish the definitions and the obligations of the different parties involved in the carriage of dangerous goods in the so-called Technical Annexes of RID and ADR (see No. 10), the texts drafted to this end by the Working Group were called into doubt many times (see the reports on the following meetings: RID/ADR Joint meeting, September 1997, Bulletin 1997, p. 336; 9th session of the Working Group, October 1997, Bulletin 1997, p. 338; 10th session of the Working Group, January 1998, Bulletin 1998, p. 41; RID/ADR Joint meeting, March 1998, Bulletin 1998, p. 80; 11th session of the Working Group, 19 May 1998, Bulletin 1998, p. 148). With the exception of just a few points which remained in abeyance, the texts in question, in the first part of the Annexes to RID and ADR, were finally adopted by the RID/ADR Joint meeting in September 1998. The points which remained in abeyance, particularly the definitive determination of the obligations of the different involved parties, were again the subject-matter of deliberations within various other working groups. All the texts, however, had still to be formally decided: with regard to RID, by the RID Committee of Experts and, with respect to ADR, by the competent body of the UNECE.

16. The restructuring of the Technical Annex for the purpose of facilitating its application by the user involved a substantial workload. Insofar as the Technical Annex includes provisions whose adoption and amendment come within the exclusive remit of the RID Committee of Experts, this work did not affect the timetable scheduled for the work within the framework of the preparation of the decisions of the 5th General Assembly. Since all the work on the restructuring of the Annex of Appendix C was not finally completed until after the 5th General Assembly, but also because of the volume of the texts of this Annex, the legal solution chosen was the same as that accepted in the revision of the CIV and CIM Conventions in 1980.

17. It was planned that the work relating to the restructuring centred on the users of the "Technical" Annex to Appendix C should be completed by the end of 1999, after a total of 15 one-week sessions of the Working Group commissioned with the restructuring, so that the date of entry into force, 1 January 2001, could be met. That was also the date planned by the UNECE for the amendments to ADR and by the IMO for the amendments to the IMDG Code.

18. The 5th General Assembly (26 May – 3 June 1999) adopted, without amendment, the texts decided by the Revision Committee (Report, p. 182/183).

19. In the context of the "plenary competence" of the RID Committee of Experts with regard to the amendments of the whole of Appendix C, confirmed by the 5th General Assembly, there was a certain interest in the suggestion by Belgium, CIT and UIC submitted to the 5th General Assembly, according to which "the questions of liability of the future RID must come within the scope of competence of the Revision Committee and not within that of the RID Committee of Experts". The Central Office had always been of the opinion that legal questions should come within the scope of competence of the Revision Committee. However, it was unable to persuade the majority of the Member States (for more details, see General Assembly document AG 5/3.16 of 1 May 1999).

20. At its 47th session (Sofia, 16 – 20 November 2009) and 48th session (Berne, 19 and 20 May 2010), the RID Committee of Experts adopted amendments to Articles 1, 3 and 5 of Appendix C. These were necessary firstly because of the accession of the Russian Federation to COTIF, which took effect on 1 February 2010, and secondly because of amendments to the provisions on the carriage of dangerous goods as hand luggage, registered luggage and in and on board motor vehicles (see the amendments to the Articles concerned in the Explanatory Report).

In particular

Article 1
Scope

1. The term "international" has not been defined. In any case, it is necessary that the carriage is performed on the territory of at least two Member States. Moreover, the applicability of RID does not depend on the fact of the carriage being subject or not subject to the CIM Uniform Rules (see Nos. 3-5 of the General Points).

2. In addition to the carriage proper, the scope of application also includes all the activities provided for by the Annex, particularly the operations of loading and unloading of dangerous goods. In Part 1 of the Annex, General Provisions, the term carriage is defined substantively and independently of the contract of carriage, namely, as the change of place of dangerous goods, including stops made necessary by transport conditions and including any period spent by the dangerous goods in wagons, tanks and containers made necessary by traffic conditions before, during and after the change of place. The term "carriage" also covers the intermediate temporary storage of dangerous goods in order to change the mode or means of transport (transhipment).

3. § 1, letter b) regulates, in particular, the problem of complementary carriage on maritime routes. In this context, the carriage of tank-wagons on the Baltic Sea ferries, assumes a particular importance. In every case of complementary carriage by road or by inland waterway, ADR and ADN will always apply to the transport operation with the respective mode, even if there is only one contract of carriage.

4. The IMDG Code does not currently contain any special provisions for the above-mentioned carriage of tank-wagons. The so-called “Memorandum of Understanding” contains rules concerning carriage on the Baltic Sea.

5. Insofar as the IMDG Code will not in future create special provisions for the carriage of rail wagons mentioned above – which is unlikely, at least – it is necessary to have available a legal regulation, to which the Annex of Appendix C lends itself very well. Since 1 January 2004, the IMDG Code has been a mandatory component of the 1974 International Convention for the Safety of Life at Sea (SOLAS), and hence mandatory international law. For this reason, the special provisions of RID must not be contrary to these provisions of maritime law; they could, however, complement them. Consequently, and in consideration of future maritime law in particular, the text adopted by the Revision Committee includes a reservation with regard to the provisions that are applicable to carriage with other transport modes (Report on the 20th session, 1st meeting, p. 2/3).

5a. The opportunity the Member States have in accordance with the first sentence of Article 42 § 1 of COTIF 1999 to make declarations not to apply in their entirety certain Appendices to the Convention meant that it was necessary in the provisions of certain Appendices to differentiate between Member States that apply this Appendix and Member States that have made a declaration not to apply this Appendix. In Appendices F (APTU) and G (ATMF), a special term was introduced – Contracting State – which means a Member State that has not made a declaration not to apply the Appendix concerned. As the Russian Federation acceded to OTIF with effect from 1 February 2010 and made a declaration not to apply Appendix C (RID), so that RID does not apply in all the Member States of OTIF, the need also arose for RID to differentiate. Therefore, by analogy with APTU and ATMF, the term RID Contracting State was defined (see explanations on Article 1bis) and in paragraph a, Member States was replaced with RID Contracting States.

6. § 2, in alignment with similar texts in ADR and ADN and in the EU’s RID/ADR/ADN Framework Directive, includes the prohibition of the carriage, in international rail traffic, of dangerous goods whose carriage is prohibited by RID. This statement is in the interest of legal clarity.

Article 1bis
Definitions

This Article contains the new definition of RID Contracting State. For the justification, see N°. 5a of the remarks on Article 1.

Article 2
Exemptions

1. This provision, like the analogous provision in ADN, states that the Technical Annex can make provision for certain exemptions. Such provisions are included in RID 1.1.3. According to 1.1.3, the provisions of RID do not apply to the following categories of carriage, among others:

a) carriage of dangerous goods performed by private individuals when the goods in question are packaged for retail sale and intended for their personal or domestic use or for their leisure or sporting activities;

b) carriage of machinery or equipment not specified in RID which happen to contain dangerous goods in their internal or operational equipment;

c) carriage undertaken by enterprises which is ancillary to their main activity, such as deliveries to or returns from building or engineering sites, or in relation to surveying, repairs and maintenance in limited quantities;

d) carriage undertaken by the competent authorities for the emergency response (e.g. police and fire brigade) or under their supervision;

e) emergency transport intended to save human lives or protect the environment, provided that all measures are taken to ensure that such transport is carried out in complete safety.

2. The Revision Committee decided not to include in the text of the present Appendix C a restrictive list of the types of carriage which can be exempted. Instead, it insisted on stipulating expressly that exemptions are admissible only if the safety of the carriage is guaranteed (Report on the 20th session, 1st meeting, pp. 3-5).

Article 3
Restrictions

1. Following the example of Article 4, § 1 of ADR and Article 6 of ADN and the analogous provisions in the RID/ADR/ADN Framework Directive of the EU, RID also stipulates that each RID Contracting State has the right to regulate or prohibit the carriage of dangerous goods by rail for reasons other than safety during carriage, insofar as this is not already provided by the provisions of the Annex.

2. For the reasons why Member State was changed to RID Contracting State, see N°. 5a of the remarks on Article 1.

Article 4
Other prescriptions

Due to the removal of the legal link between RID and the CIM Uniform Rules, the Working Group and the Revision Committee considered that it was necessary to draw express attention to the fact that, in addition to RID, the general provisions relating to carriage by rail were also applicable. A comparable provision is contained in Article 5 of ADR and Article 9 of ADN.

Article 5
Type of trains allowed. Carriage as hand luggage, registered luggage or in or on board motor vehicles

1. Since, following the decisions of the Revision Committee and the 5th General Assembly concerning the CIM Uniform Rules, the current Annex IV (RIEx) to CIM 1980 has been withdrawn, it was necessary to mention this type of carriage in the le-

gal part of the RID, this type of transportation being subject to special provisions in RID. This relates to the carriage of small quantities of dangerous goods which may exceptionally be carried in passenger trains instead of goods trains.

2. The prohibition, contained in Article 18 of the CIV Uniform Rules 1980, on the carriage of dangerous substances and objects as luggage was closely linked to the obligation to carry, according to Article 4 of the CIV Uniform Rules 1980. In the CIV Uniform Rules 1980, the prohibition on the carriage of dangerous goods was worded in a much more general manner than is the case in the provisions of RID.

3. The carriage of dangerous goods as hand luggage, registered luggage or in or on board motor vehicles (car on train), in accordance with Article 12 of the CIV Uniform Rules in the version adopted by the 5th General Assembly, represents an exception, necessary in practice, from the obligation to carry dangerous goods solely in goods trains.

4. Article 12, § 4, in combination with Article 14 of the CIV Uniform Rules, in the version adopted by the 5th General Assembly, obliges the passenger to comply with the corresponding provisions of RID. The passenger is liable to the carrier for all damage resulting from non-compliance with this obligation (see remarks relating to Articles 12 and 53 of the CIV Uniform Rules, General Assembly document AG 5/3.4 of 15 February 1999). The problem of how best to make passengers aware of these provisions concerning dangerous goods, e.g. in the form of notices in stations or in the form of brochures, has to be distinguished from the question of how the legal provisions are drafted. A presentation which is easily understandable and generally accessible will be of particular importance.

5. Article 5 sets out the general principle according to which such carriage is permitted only when subject to the special conditions of RID. The details with regard to quantities, packagings, inscriptions, etc., as well as the special provisions for dangerous goods used in connection with a medical treatment, for example (e.g. gas cylinders) must be regulated in the Annex of RID.

6. The amendment to the heading of the Articles from on board motor vehicles to in or on board motor vehicles was made to align with the definition in Article 3 d) of CIV and Article 12 § 4 of CIV.

7. The amendments to § 1 b) were made to align with Article 12 § 4 of CIV and to make the correlation with this provision clear.

8. The new wording of § 2 was aligned with Article 12 § 4 of CIV, where the passenger is not shown as the addressee.

Article 6
Annex

This provision serves the purpose of legal clarity and allows editorial simplification (Report on the 20th session, 1st meeting, p. 7).

Uniform Rules concerning Contracts of Use of Vehicles in International Rail Traffic (CUV)

Explanatory Report [10]

General Points

Background

1. In its circular letter of 22 January 1993 concerning the consequences of Council Directive 91/440/EEC of 29 July 1991 for international rail transport law, the Central Office drew attention to the fact that:

   - in rail traffic there will be a new type of relationship, concerning the co-operation of the owners of private wagons (P wagons) with the rail transport companies (No. 7) and the infrastructure managers (No. 8)

   - the rail operation monopoly as it currently exists will be reduced to a monopoly of infrastructure managers (No. 9), and

   - the notion of "railway" will assume a different meaning (Nos. 11, 19 and 28).

2. In Annex 3 of the circular letter of 3 January 1994, the Central Office presented the member States and the interested international organisations and associations with the question of whether more detailed provisions regarding the registration and admission of P wagons and containers to international rail traffic were necessary within the framework of COTIF or the CIM Uniform Rules and their Annexes.

3. This question had been posed in consideration of the fact that the Regulations concerning the International Haulage of Private Owner's Wagons by Rail (RIP) presupposes that P wagons are registered with a railway which is subject - through registration of the lines - to the CIM Uniform Rules (Article 2, RIP), but it does not regulate the conditions of registration. According to Article 2 of RIP, registration by way of a "CIM railway" implies approval for international traffic on other railways whose lines are also subject to the CIM Uniform Rules. In the system of integrated ("monolithic") railways, it was not necessary to make a clear distinction between, on the one hand, approval for traffic and, on the other hand, registration in the stock of railway wagons. These two functions were performed by a state railway or a railway operating as a state concession. The European Community (EC) law on competition prohibits the granting to a company or association of companies the right to approve equipment and thus to decide upon access to the market by other companies with which it is in competition (see Explanatory Report on the draft CIM of 5 May 1995, Annex 2 to the circular letter of 5.5.1995, No. 26, published in the 1995 Bulletin, pp. 118-146).

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10 The articles, paragraphs, etc. which are not specifically designated are those of the CUV Uniform Rules. Unless otherwise evident from the context, the references to the reports on sessions not specifically identified relate to the sessions of the Revision Committee.

4. The majority of the States which responded to the above-mentioned enquiry considered, contrary to the International Union of Private Wagons (UIP) and other users § associations, that more detailed provisions regarding the registration and admission of P wagons and containers to international rail traffic were not initially necessary (see summary of the responses to the list of questions concerning the revision of COTIF, 1994 Bulletin, p. 130/131).

5. In a circular of 8 June 1995, the Central Office forwarded to the Member States and the interested international organisations and associations a communication from the UIP, including the draft of a regulation concerning the use of private wagons in rail traffic. The response to these UIP proposals for the revision of the law on private wagons, although weak, was nevertheless favourable in the majority of cases.

6. The 2nd meeting of the Committee of Experts of the International Rail Transport Committee (CIT) (21 - 23.11.1995) also dealt with this problem and came to the following conclusions:

   - RIP must be replaced by a general law on wagons. Where this is to be placed can only be determined in the course of the work.

   - A clear distinction must be made between the technical admission and the registration of wagons.

   - The railways need legal rules both for the carriage and the technical admission of wagons.

   - The transport rules which are judged to be necessary must allow the contracting parties as broad an autonomy as possible. To this end, Article 2 of RIP, for example, should not be reincluded in a future law on wagons.

   - The railways are aware that, in the interest of all parties to the general law on wagons, it is necessary to create legal bases which are durable and reliable so as to achieve a successful commercial policy.

The Central Office drafts of 4 April 1996

7. The Central Office undertook its preparatory work on the basis of the viewpoints mentioned in Nos. 5 and 6. To this end, a number of experts were consulted. The Central Office came to the conclusion that a new law on wagons should be limited to international traffic. Each State, however, would be free to decide on the degree to which it wished to align its regulations for internal traffic to the future international Uniform Rules to be applicable in international traffic.

8. It appeared necessary to regulate the following four areas:

   - technical admission of rail vehicles

   - reciprocal use of wagons

   - registration of wagons

- special transport law provisions concerning the carriage of wagons and large containers

9. The area “technical admission” and also the areas “reciprocal use of wagons” and “registration of wagons” do not depend on the conclusion of a contract of carriage in accordance with the CIM Uniform Rules. Consequently, they were to constitute separate Appendices to COTIF. The special provisions of transport law were to be directly incorporated into the CIM Uniform Rules as Chapter IVa.

10. Whilst safeguarding the autonomy of the parties to the contract, the Central Office draft concerning “the reciprocal use of vehicles” and “the registration of wagons” (1996 Bulletin, p. 106), had provided for uniform rules for:

- the use of vehicles of other rail transport companies, namely, vehicles known until that time as network wagons, the reciprocal use of which is currently regulated by the Regulations on the Reciprocal use of Wagons (RIV) and of Carriages and Vans (RIC) in International Traffic

- the tried and tested institution of the “registration contracts”, i.e., wagons known hitherto as private wagons

The Central Office draft did not regulate, at international level, other contracts concerning the right to have disposal of rail wagons (e.g., hiring, leasing, contract of use in individual cases), which were to remain subject to the national law.

11. The draft of a new Chapter IVa of the CIM Uniform Rules (Special Provisions for Carriage) regulated the case in which “special” goods, namely, vehicles running on their own wheels, were remitted for carriage. The draft also made provision for special transport provisions when large containers were remitted for carriage and their nature as *means* of transport justified such special provisions (cf. the current Regulations concerning the International Carriage of Containers by Rail - RICo).

The result of the work of the Revision Committee

12. The Revision Committee (8th session, 11 - 15.11.1996), examined the draft of 4 April 1996 of the “Uniform Rules for Contracts for the Reciprocal Use and the Registration of Vehicles (UIV)”

13. Since only 17 Member States were represented, the necessary quorum (20 of the 39 Member States) was not achieved and the Revision Committee was therefore not empowered to take decisions, in accordance with Article 8, § 2 of COTIF 1980.

14. Contrary to the provision made in the Central Office drafts, the majority of the Member States represented followed the suggestion of the International Union of Railways (UIC) and of the CIT, that the “registration contract” should not be regulated a special type of contract. Instead, the contract of use was to be regulated in future in such a general manner that the same provisions would be applicable to all contracts concerning the use of wagons (= contract of use in the broad sense). i.e., they were to be applicable to the use of:

- vehicles which were incorporated as “network wagons” into the vehicle stock of a rail transport company

- wagons which are not network wagons and which are incorporated into the wagon stock of a rail transport company (current P wagons)

- other wagons (“ad hoc wagons”)

The Uniform Rules to be created were to be limited, essentially, to the questions of liability, debarment by limitation and place of jurisdiction.

15. The represented Member States were unable to agree on the point of whether it was necessary to seek a solution based exclusively on a contractual liability or whether it was preferable to create directly by law, on the one hand, claims for compensatory damages by the “keeper” (“rightful owner of the wagon”) against the railway using the wagon at the time of the prejudicial event and, on the other hand, claims for compensatory damages against the “holder” by the railway using the wagon/vehicle at the time of the prejudicial event.

16. The opinion of a large majority of the delegates present was that there was a need for “time for reflection”. Consequently, the deliberations were not resumed until the 12th session of the Revision Committee (5 - 7.5.1997).

17. In consideration of the results of the eighth session of the Revision Committee, the Central Office had prepared new draft texts (Annexes 1 and 2 to the circular letter of 17.2.1997), to which graphical representations had been appended in order to render more comprehensible the legal problems which were to be resolved (Annexes 3, 4 and 5 to the aforementioned circular letter) (see also the Explanatory Report, 1997 Bulletin, p. 98).

18. Since only 19 Member States were represented, the necessary quorum (20 of the 39 member States) was once again not achieved in the 12th session. Consequently, the Revision Committee was again not empowered to take decisions. Notwithstanding, the Revision Committee decided to complete the 1st reading of the texts for indicative purposes (see also No. 29).

19. The majority of the Member States present pronounced themselves in favour of a solution based on a contractual liability, providing for the possibility of a subrogation, but only on condition that the contract concerning the use of the vehicle expressly provides that the rail transport company is *authorised* to entrust the vehicle to other rail transport companies for its use as a means of transport. Subrogation means that the parties to the contract of use may agree that another person is substituted for them in respect of the rights and obligations arising from the contract (see the remarks relating to Article 8).

20. With regard to the new Chapter IVa of the CIM Uniform Rules concerning special provisions for the carriage of wagons and large containers, none of the Member States represented considered it necessary, initially, to create such provisions (Report on the 12th session, pp. 38-40).

21. As in the case of the new CIM Uniform Rules, the CIM Uniform Rules currently in force do not exclude vehicles running on their own wheels, whether empty or loaded, from constituting the subject-matter of a contract of carriage (cf. also Article 5, § 1, letter b) CIM 1980). Since the new CIM Uniform Rules no longer provide for an obligation to carry, each rail transport company is free to conclude such a contract or not. The transfer of passenger carriages or goods wagons leaving the factory is not in any case a matter of a contract of use since, in these cases, the wagons are not a means of transport, but the object of the carriage. This also applies to all transfers of empty wagons, irrespective of whether such carriage is performed within the framework of a contract of carriage or not.

22. However, liability according to the CIM Uniform Rules is more severe than that according to the Uniform Rules concerning Contracts of Use of Vehicles in International Rail Traffic (CUV Uniform Rules). According to Article 23 of the CIM Uniform Rules - as also according to Article 36 of the CIM Uniform Rules 1980 - liability is a matter of strict, causal liability with provision for grounds for exoneration. Article 4 of the CUV Uniform Rules, on the other hand, provides for a liability for fault with reversal of the burden of proof.

23. It was for this reason that, in the 16th session (23 - 27.3.1998), the Revision Committee introduced into the CIM Uniform Rules special provisions concerning liability in the case of the carriage of railway vehicles running on their own wheels and having been consigned, as well as concerning compensation in case of loss or damage of a railway vehicle, intermodal transport unit or their parts (see the remarks relating to Article 24, Article 30, § 3 and Article 32, § 3 CIM).

24. Furthermore, in the 16th session, the Revision Committee decided to introduce into the Basic Convention, as common provisions, the identical provisions of the Appendices (Report, pp 7, 12 and 15). Consequently, the provision relating to the applicable national law is included in Article 8 of COTIF (Report on the 19th session, p. 13/14).

25. Following the example of Article 3 of RIP, the Central Office draft of the UIV Uniform Rules of 4 April 1996 had initially made provision, in Article 4, for three conditions on the use of vehicles, namely:

- technical admission
- the vehicle’s fitness for traffic
- the principle according to which a vehicle may only be used for the purpose for which it was approved

26. The technical admission itself is not to be regulated in the contracts of use or in the CUV Uniform Rules, but in other provisions, adopted by the Revision Committee on the second reading (cf. the first Central Office draft of 1.7.1997 concerning the Uniform Rules concerning the Technical admission of Railway Vehicles - ATV - and the explanatory remarks on it, Annexes 1 and 2 to the circular letter of 31 January 1997, as well as the Uniform Rules concerning the Validation of Technical Standards

and the Adoption of Uniform Technical Prescriptions applicable to Railway Material intended to be used in International Traffic – ATMF Uniform Rules). For this reason, following the example of Article 2 of RIP, the technical admission is presupposed only.

27. The provisions of public law such as, for example, those relating to approval for traffic or traffic safety, are mandatory, irrespective of the agreements of the parties to the contract with regard to the use of the vehicle. The legal consequence of non-compliance with the conditions provided in Article 4 of the 1st text draft concerning the use of a vehicle cannot be regulated in a uniform manner in the CUV Uniform Rules. They are regulated by the national law, due to the fact that there is the possibility not only of consequences in respect of liability, but also of sanctions being issued by administrative authorities, or even of penal consequences. For this reason, in an indicative vote, the majority of the Member States represented in the Revision Committee declared in favour of Article 4 being withdrawn from the draft (Report on the 12th session, p. 10).

28. Furthermore, the majority of the Member States represented in the Revision Committee considered that it would be unnecessary to make provision, after the example of Article 20 of the Uniform Rules concerning the contract of Use of Infrastructure in International Rail Traffic (CUI Uniform Rules), for the possibility of agreeing litigation agreements. The existing possibilities, particularly in accordance with Article 4, § 5, Article 6, § 4 and Article 7, § 2 were judged to be sufficient (Report on the Twelfth session, p. 34).

29. In its 20th session (1.9.1998), on the 2nd reading, the Revision Committee essentially confirmed the texts adopted indicatively at the 8th and 12th sessions and adopted the CUV Uniform Rules, with the necessary quorum.

30. The 5th General Assembly unanimously adopted, without amendment, the texts decided by the Revision Committee (Report, p. 183).

In particular

Article 1
Scope

1. This provision defines the scope of application in a sufficiently broad manner to include all contracts which have as their subject-matter the use of railway wagons (all the types mentioned in No. 14 of the General Points) as a means of transport.

2. The fact that no distinction is made according to the usual contract categories entails a lack of precision. The conventional “registration contract” is no longer defined as a special contract due to the fact that, in particular, use as means of transport, in accordance with the *instructions of the owner*, and the carriage of empty or loaded wagons, in accordance with the *instructions of the owner*, are no longer provided for as constituent elements. The parties may agree rights and obligations in this area in the “contract of use”.

3. The assignment of the vehicle, i.e., its use as a *means* of transport and not its status a goods to be carried, is a typical element of the contract of use. It is essential to differentiate it from the contract of carriage.

4. Originally, the CUV Uniform Rules were not intended to regulate other types of contract such as, for example, the hire, leasing or charter contract. In view of the very general wording of Article 1, other contracts such as, for example, that concerning the hiring or leasing of a vehicle, can be subject to the CIV Uniform Rules, unless at the time of conclusion of a hire or leasing contract the parties clearly express their wish to conclude such a contract and not a contract of use within the meaning of the CUV Uniform Rules.

5. Article 1 furthermore states that contracts of use can be concluded not just between two parties, but also between several parties, as is the case with so-called pool contracts. On the other hand, no mention is made of the criterion of reciprocal use, which is generally a typical element of these contracts, in order that the scope of the CUV Uniform Rules is not excessively limited (Report on the 8th session, p. 12).

6. Article 1 does not include contracts of use whose sole purpose is use as means of transport for *internal* traffic. However, the Member States remain free to align their national rules to the CUV Uniform Rules or to include them in their national law.

Article 2
Definitions

1. In view of the separation of infrastructure and transport activity, the term “rail transport undertaking” has been defined. The authorisation to carry goods or/and persons and the fact of having means of traction are essential characteristics of a rail transport undertaking which differentiate it from the infrastructure manager and also from the wagon hire undertakings.

2. Unlike the German generic term “Wagen” [“wagon”], the French generic term “véhicule” [“vehicle”] is broader, in that it includes goods wagons, passenger carriages and luggage vans, and even vehicles provided with means of traction. This is why the definition expressly *excludes vehicles provided with means of traction* from the generic French term “véhicule” [“vehicle”].

3. In its 20th session, the Revision Committee introduced a definition of the term “keeper”. This term is based on the legal institution which is well known and familiar in road transport. The keeper is not necessarily the owner in the sense of civil law. This definition corresponds to that of Article 2, letter e) of the ATMF Uniform Rules.

4. The definition of the “contract of use” devised in the eighth session of the Revision Committee (Report, p. 24), included elements which finally defined the scope of application of the CUV Uniform Rules. These elements have been transferred to Article 1, so that a definition of the contract of use in Article 2 has been rendered superfluous.

Article 3
Signs and inscriptions on the vehicles

1. It is necessary to differentiate between inscriptions which are rendered mandatory by provisions of public law, e.g., by the provisions concerning technical admission, and inscriptions which are agreed between the parties to the contract of use. Within the framework of the CUV Uniform Rules, it is important to specify the person who is under obligation to guarantee that the necessary inscriptions are set on the vehicle. It is furthermore useful to state that the parties to the contract of use may agree other inscriptions, it being understood that these must comply, as applicable, with the limitations imposed by public law. With regard to the inscriptions and signs prescribed by public law, see Article 14 of the ATMF Uniform Rules.

2. The majority of the Member States represented in the Revision Committee considered it necessary that the keeper should be indicated by inscription on the vehicle (Report on the 20th session, 2nd meeting, p. 4/5). The keeper uses the vehicle as a means of transport on a permanent basis, whereas his contractual partners can change frequently.

3. Article 3 allows the current designation of P wagons to be retained when this is the wish of the parties to the contract of use, i.e., to the conventional registration contract.

4. The mandatory inscriptions provided for by the Regulation concerning the International Carriage of Dangerous Goods by Rail (RID) are not mentioned in Article 3 because they are not based in the contract of use, but imposed by the provisions of RID.

5. Inscription of the home station is not obligatory, since it is conceivable that, in future, it will not necessarily be a requirement to agree such a station, particularly in the case of ad hoc vehicles, which are not incorporated in the vehicle park of a rail transport undertaking.

6. § 2 serves to clarify that means of electronic identification can be used to facilitate the automatic identification of vehicles.

Article 4
Liability in case of loss or damage of a vehicle

1. Liability is conceived of as liability for presumed fault, leaving the possibility of contrary proof, and is based on the system of liability that is applicable in the case of loss or damage of a P wagon remitted for transport (Article 12, § 1 RIP). The RIV and RIC rules currently provide for a different system of liability.

2. Compensation is limited to the *usual value* of the vehicle or its accessories at the place and at the time of the loss. However, it is not possible to ascertain the date or place of loss in all cases. In its 22nd session (1 - 4.2.1999), the Revision Committee thus added a provision according to which, in a given case, the date and the place at which the vehicle has been provided for use are to be taken into consideration (Report, p. 69/70).

3. § 5 provides for the possibility whereby the parties to the contract may agree another system of liability. This would enable rail transport undertakings to retain their contractual regulations that are currently in force. For example, they could agree a separate liability of fault in case of grave damage, with obligation to surrender rights to compensatory damages in respect of third parties, as is currently provided for in No. 19 of RIV and in No. 20 of RIC.

4. Even the scope of application according to Article 1 indicates that liability is a contractual liability and, consequently, on the basis of the contract of use, the rail transport undertaking is answerable to its contractual partner, but not to third parties. To repeat this in the text is not only superfluous, but also inappropriate, in view of the wording of the CIM Uniform Rules. Consequently, a text has been chosen which retains the editorial parallelism with Article 36 of the CIM Uniform Rules 1980 and Article 23 of the new CIM Uniform Rules. See also the remarks relating to Article 10.

5. Whereas, in the case of loss of the vehicle or of its accessories, compensation is limited to the *usual* value, in the case of damage to the vehicle or its accessories, compensation is limited to *the cost of repair* (§§ 3 and 4). So-called pecuniary damages, particularly a loss of earnings (lucrum cessans) are not compensated. However, the parties to the contract may agree dispensatory provisions, in accordance with § 5, allowing continuation of the current practice of compensation for loss of used, as provided, for example, in No. 20.4 of the UIC leaflet 433 for P wagons.

Article 5
Loss of right to invoke the limits of liability

1. Since Article 4, §§ 3 and 4 provides for a legal limitation of liability, although only as optional law, provision has been made for withdrawal of this limitation of liability in case of qualified fault, following the example of Article 44 of the CIM Uniform Rules 1980 and Article 36 of the CIM Uniform Rules (Report on the 12thsession, p. 15).

2. This provision is mandatory, in that dispensatory agreements between the parties to the contract are not permitted. Although it might be supposed that such cases almost never occur in practice, this protection of the contractual partner, in case of qualified fault, does appear to be indicated from a legal policy point of view.

Article 6
Presumption of loss of a vehicle

1. At present, the period upon the expiry of which a vehicle can be considered as lost is regulated in three different ways (3 months for P wagons, according to Article 13 RIP, 12 months for network carriages according to No. 19 RIC and 18 months for network wagons according to No. 18 RIV). The provision concerning the future uniform period of three months (§ 1) is optional in nature, thus permitting the retention of the regulation in force for so-called network wagons (§ 4). A subsidiary legal regulation providing for a short period for all vehicles appears expedient and justified at the present time.

2. The majority of the Member States wished to regulate the case in which a vehicle which is presumed lost is subsequently found. The provisions of Article 13 of RIP have been supplemented in respect of the case in which the restitution of the vehicle is not requested or the case in which the vehicle is found again more than one year after the payment of compensation. Article 29, § 4 of the CIM Uniform Rules was used as a model for § 3. This provision is also optional in nature (§ 4).

3. The "person entitled" in the sense of this article is the claimant who entrusted the vehicle for use as a means of transport on the basis of a contract in accordance with Article 1.

Article 7
Liability for loss or damage caused by a vehicle

1. In the 8th session of the Revision Committee, the majority of the States represented adopted the solution according to which the "keeper" of the vehicle is liable for damage caused by the vehicle, unless the keeper proves that the damage caused was not his fault (Report on the 8th session, p. 44). The term "keeper" meant - and still means - the person who exploits the vehicle economically in a permanent manneras a *means of transport* (see the definition in Article 2, letter c). The keeper must be identified as such by an inscription on the vehicle (Article 3, § 1, letter a); cf. the situation with regard to road vehicles).

2. When the contract of use makes provision whereby the rail transport undertaking may entrust the vehicle to other rail transport undertaking for use as a means of transport and such use is made of it, the rail transport undertaking which actually uses the vehicle is not necessarily the contractual partner of the keeper, i.e., of the contracting party to the first contract of use. A direct liability on the part of the keeper towards such a rail transport undertaking would no longer be a liability on a purely contractual basis; rather, such a liability would have to be based directly on the legal provisions of the CUV Uniform Rules (Report on the 8th session, pp. 44 and 46/47). Otherwise, liability would be tortuous *(ex-delicto)* or quasi-tortious, according to national law.

3. In the 12th session of the Revision Committee, a majority of the States represented pronounced in favour of a liability based solely on the contract. By agreeing a subrogation, the parties to the contract of use can achieve the situation wherein the keeper is substituted for the rail transport undertaking which took the vehicle for use and which subsequently entrusted the vehicle to another rail transport undertaking for use. A situation can thus be achieved wherein this latter rail transport undertaking is considered to be the contractual partner of the keeper (see also the remarks relating to Article 9).

4. Even the scope of application according to Article 1 indicates that the liability is a contractual liability (see No. 3 of the remarks relating to Article 4). Liability towards third parties who have no commercial connection, with regard to the contract, with the parties to the contract of use, is regulated by the national law (see also No. 2 of the remarks relating to Article 10).

5. Since the damages caused by a vehicle can be significantly greater than the damages due to the loss of or damage to a vehicle or its accessories, this provision cannot simply be composed following the example of Article 4. In particular, it is not acceptable to limit the compensatory damages solely to material damage. Contrary to the situation in case of loss of or damage to the vehicle or its accessories, physical injury also has to be taken into consideration. Whereas, in the case of Article 4, the so-called (purely) pecuniary damages are limited essentially to a loss of use, the actual material damage caused by vehicles can be significantly greater, particularly in the case of damage to the infrastructure and to third parties, damages for which the user rail transport undertaking is liable (e.g. damage to the environment).

6. According to Article 12, § 6 of RIP, actions by the railway against the owners in respect of damages caused by vehicles during forwarding are governed by the contract of registration. According to No. 22 of the UIC leaflet 433, the owner's liability differs according to whether or not the damage is caused by an infrastructure element (vehicle element) related to operating safety. The owner/keeper is only liable for damages which have been caused by an infrastructure element related to operating safety if the rail undertaking proves that the damage does not result from a fault caused by the rail undertaking. In all other cases, in order to free himself from liability, the owner/keeper must prove that the damage is attributable to a fault on the part of the railway. The Member States represented in the 12th session of the Revision Committee pronounced unanimously (less 5 abstentions) in favour of a solution which provides, as a legal model, for a liability for fault, but without limitation of compensatory damages (Report on the 12th session, p. 20).

7. According to § 2, the provisions of § 1 have the nature of optional law. Consequently, the current practice of registration contracts, in accordance with UIC leaflet 433 and the so-called guarantee agreement, can be continued when this is agreed by the parties to the contract of use. The regulation provided by No. 68 of RIV and by No. 21 of RIC, according to which the rail transport undertaking themselves bear damages caused by the vehicles of other rail transport undertaking, can also be retained by an agreement, in accordance with § 2. Such a regulation is appropriate if the parties to the contract take as a basis the idea that, taken as a whole, the damages suffered by them and the damages caused by their vehicles are more or less equal. The parties to the contract of use will thus spare themselves difficult and costly investigations into the causes of the damages, procedures for the safeguarding of means of proof, which can cause considerable disruption to the rail operation, and very costly litigation.

Article 8
Subrogation

1. "Subrogation" means that, in a legal relationship, one person is substituted for another for the purpose of enabling the first person to exercise, wholly or partly, the rights of the second person.

2. Subrogation is linked to the agreement of the keeper (see also No. 7).

3. As indicated in No. 1 of the remarks relating to Article 7, in the case of contracts allowing the rail transport undertaking to entrust the vehicle to other rail transport undertaking for use as a means of transport, this second or any other subsequent rail transport undertaking is not the contractual partner of the keeper. In the case of damage caused to the vehicle, subrogation allows, firstly, the contractual partner of the keeper to be legally substituted for the rail transport undertaking to which the vehicle was entrusted (letter a). Secondly, in the case of damages caused by the vehicle, subrogation allows the keeper to be substituted, in his relations with the other subsequent rail transport undertaking which have used the vehicle, for the rail transport undertaking to which the keeper himself actually entrusted the vehicle. Consequently, he is directly and contractually answerable to the user rail transport undertaking (letter b).

4. Although the subrogation must be agreed between the parties, the CUV Uniform Rules make express provision for this possibility, in order to guarantee that such agreements will be recognised in all the Member States and that the admissibility of such agreements will not be contested or limited, as the case may be, on the basis of the provisions of the national law (Report on the 12th session, p. 21).

5. The subrogation (letter a) by virtue of which the rail transport undertaking which is the contracting partner of the keeper agrees that it is to be substituted, in respect of the latter, for the rail transport undertaking which actually uses the vehicle, allows the liability in the event of loss of or damage to the vehicle to be "channelled" (provided for hitherto by article 12, § 5 RIP), by a legal convention, to the registering rail transport undertaking. The 2nd possibility for subrogation (letter b), namely, that the keeper is substituted, in respect of the user rail transport undertaking which is not the keeper's direct contractual partner, for the rail transport undertaking which remitted the vehicle, creates new possibilities which are those of a direct *contractual* liability on the part of the keeper towards the user transport undertaking. According to the second part of the sentence of letter b), the right of action must nevertheless be exercised by the rail transport undertaking which is the contractual partner of the keeper. By this means, a "channelling" of rights is obtained which is currently guaranteed by Article 12, § 6 of RIP.

6. When the parties to the contract of use allowing the vehicle to be entrusted to other rail transport undertaking do not make use of the possibility of subrogation, any tortious proceedings against the user rail transport undertaking for damage to or loss of the wagon can only be exercised within the conditions and limitations of the CUV Uniform Rules and those of the contract of use (Article 10).

7. Furthermore, the parties to the contract of use may agree that the vehicle may be entrusted to other rail transport undertaking for use as a means of transport but that, in such a case, it is not permitted to agree a subrogation (see also the remark in No. 2).

8. Subrogation is not the only permitted agreement. Other agreements may also be provided for in the contract of use.

Article 9
Liability for servants and other persons

1. § 1 corresponds to Article 40 of the CIM Uniform Rules, Article 51 of the CIV Uniform Rules and Article 18 of the CUI Uniform Rules.

2. The notion that the CUV Uniform Rules also give infrastructure managers the *ex lege* status of persons whose service is used by the user of the vehicle was not initially taken up by the Member States represented in the Revision Committee (Report on the 12th session, p. 25), but was unanimously adopted in the 20th session, with the proviso that the parties to the contract are able to agree other rules (§ 2) (Report on the 20th session, 2nd meeting, p. 9/10).

3. § 3 specifies that not only are the parties to the contract of use liable for their servants and for other persons, but so also is the rail transport undertaking or the keeper substituted for them by subrogation. In view of § 1, § 3 is not indispensable, since Article 8 is intended to have precisely the effect that the rights can only be exercised by the parties/against the parties to the first contract of use. However, it excludes a differing interpretation, eliminates all doubts and thus serves the purpose of legal clarity.

Article 10
Other actions

1. The wording “in all cases where these Uniform Rules shall apply” is also intended to include third parties not participating in the contract of use, insofar as these parties have commercial links with one of the parties to the contract of use, these being links which have a definite connection with the contract of use. For example, they could be parties to subsequent contracts of use or the owner, according to civil law, of the vehicle.

2. This provision corresponds to Article 41 of the CIM Uniform Rules, Article 52 of the CIV Uniform Rules and Article 19 of the CUI Uniform Rules (cf. also the jurisprudence concerning Article 28, paragraph 1 CMR, particularly the judgement of the German Bundesgerichtshof [Federal Court] of 12.12.1991). It is intended to guarantee that the conditions and limitations provided for in these Uniform Rules and in the contract of use will not be circumvented by the fact that other proceedings, particularly actions in tort, can be brought either by parties to the contract of use or by third parties who have commercial links with them.

3. Article 10 applies only to actions for compensatory damages for loss of or damage to the vehicle or its accessories, since the CUV Uniform Rules do only provide for limitation of liability in that case. For damage caused by vehicles, however, Article 7 provides for an unlimited liability for fault, rendering similar provisions superfluous. On the other hand, when the parties to the contract of use have availed themselves of the possibilities introduced by Article 7, § 2 and have agreed dispensatory provisions, and in this dispensation have provided for limitations of liability, then these contractual limitations can only be of effect amongst those parties, and not in respect of third parties. In the case of several subsequent contracts of use, it would be necessary to guarantee, by contractual clauses which the parties to each subsequent contract will not be able to enforce, as a third party in relation to the first contract of use, rights in respect of the keeper of the vehicle which go beyond that which was provided for by contract.

4. § 2 is for the purpose of clarification, following the example of Article 9, § 3.

Article 11
Forum

§ 1 allows the parties to the contract of use to agree the competent jurisdiction. The parties can also agree on a court in a non-member State (Report on the 20th session, 2nd meeting, p. 13), provided that the courts of the Non-Member State recognise such a clause for the assignment of jurisdiction. The courts of the Member States in which damage occurs have only subsidiary competence (§ 2).

Article 12
Limitation of actions

1. The three-year period of limitation corresponds to the provisions of Article 12, § 7 of RIP as in force. A proposal seeking to reduce this period to two years, i.e., to the longest period of limitation provided for in the CIM Uniform Rules, was rejected by a clear majority by the Member States represented, on the grounds that the situation concerning the rights resulting from the contract of use is not comparable to that concerning the rights resulting from the contract of carriage (Report on the 8th session, p. 48).

2. § 2, letter a) was supplemented by the specification of the time from which period starts, in the case of the date on which the vehicle was lost being unknown, but the loss being presumed.

Uniform Rules concerning the Contract of Use of Infrastructure in International Rail Traffic (CUI)

Explanatory Report [11]

General Points

1. In its analysis of the consequences of the Directive 91/440/EEC of 29 July 1991, the Central Office drew attention to the fact that the separation of infrastructure management from the provision of transport services would result in new legal relationships and new types of contracts. In such a case, the rail transport undertaking are a client and contractual partner of the infrastructure manager, whereas the passengers, freight consignors and keepers of private wagons are not in a direct contractual relationship with the infrastructure managers, but only with the rail transport undertakings as carriers or users of wagons (circular letter of 22.1.1993, No. 9).

2. In the list of questions concerning the revision of COTIF 1980 (circular letter of 3.1.1994), the Central Office posed the question, amongst others, of whether the carrier is to be liable for damages caused by the infrastructure and whether action for recourse between the carrier and the infrastructure manager is to be regulated in the Uniform Rules or whether this question should be regulated by the parties to the contract in accordance with the national law.

3. In their responses, almost all the Member States and all the international organisations and associations questioned (with the exception of Morocco and the International Rail Transport Committee - CIT) declared themselves to be in favour, in principle, of a liability on the part of the carrier towards the client with regard to damages caused by a defective infrastructure or by its operation, but with the carrier being granted a right of recourse against the infrastructure manager. On the other hand, the opinion of the large majority of the Member States was that such actions for recourse could not be regulated in the Uniform Rules as devised within the framework of OTIF, but should be regulated by the national law or should constitute the subject-matter of an agreement between the parties to the contract (summary of responses, 1994 Bulletin, pp, 124, 126).

4. In the positions expressed by the Member States and by the international organisations and associations concerning the Central Office draft for new CIM Uniform Rules of 5 May 1995, in the course of the debates of the 3rd General Assembly (14 - 16.11.1995) and of the third session of the Revision Committee (11 - 15.12.1995, Report, p. 2) and in the course of the experts § discussions, the view emerged that a uniform international regulation of relationships between the infrastructure manager and the carrier would be both useful and desirable.

5. On the occasion of the 4th session of the Revision Committee (25 - 29.3.1996), the carrier/client/infrastructure manager relationship was regulated in the CIM Uniform

11 The articles, paragraphs, etc. which are not specifically designated are those of the CUI Uniform Rules; unless otherwise evident from the context, the references to the reports on sessions not specifically identified relate to the sessions of the Revision Committee.

Rules to the effect that the infrastructure manager is declared *ex lege* an auxiliary of the carrier, the latter being consequently liable towards his clients for damages caused by a defect of the infrastructure. Clients can only enforce rights against the infrastructure manager within the conditions and limitations of the CIM Uniform Rules (Article 41, § 2 CIM).

6. The draft Uniform Rules concerning the contract of use of the railway infrastructure, including the explanatory report, drafted by the Central Office, was sent to the Member States and to the interested international organisations and associations by the circular letter of 1 July 1996 (draft published in the 1996 Bulletin, pp 181-187, explanatory report in the 1996 Bulletin, pp. 187-195). The draft was adopted on 1st reading in the 9th session of the Revision Committee (9 - 13.12.1996) and on the 2nd reading, in the 17th session (2nd meeting, 5.5.1998).

7. The Uniform Rules concerning the Contract of Use of Infrastructure in International Rail Traffic (CUI Uniform Rules) adopted by the Revision Committee are based on the fundamental idea that the parties to the contract be granted maximum freedom in the constitution of their contractual relationships, but with liability having to be regulated in a uniform and mandatory manner. This avoids, in particular, the problems which could result from nations having different systems of liability.

8. With the exception of Article 6, § 1, first and second sentences (see No. 3 of the remarks relating to Article 6), the CUI Uniform Rules regulate only the contractual relationships between the infrastructure manager and the carrier. They are intended to guarantee that this regulation is not circumvented by other competing actions (*ex delicto* or *quasi ex delicto*). Thus, competing actions, on whatever grounds, can only be brought within the conditions and limitations provided for in the CUI Uniform Rules (Article 19). In order to prevent these rules being circumvented, the Uniform Rules also include actions to be brought against auxiliaries for whom the infrastructure manager or the carrier is liable (cf. also Article 41, § 2 CIM).

9. On the other hand, the CUI Uniform Rules do not regulate other legal relationship such as, for example, the relationships between the infrastructure manager and his auxiliaries or those between the carrier and his auxiliaries. Moreover, nor do they regulate the relationship between the infrastructure manager or the carrier and third parties. This means, for example, that any actions on the part of the infrastructure manager against the contractual partners of the carrier (e.g., the consignor who has caused damage in respect of both the carrier and the infrastructure manager as a result of defective loading) are not regulated by the CUI Uniform Rules. These legal relationships are subject to the national law applicable in each individual case, in accordance with international private law.

10. Article 21 constitutes an exception to the principles set out in Nos. 7 and 8. Likewise, actions brought by auxiliaries of the infrastructure manager or of the carrier can only be brought against the other party to the contract of use within the conditions and limits of the CUI Uniform Rules. This “parallelism” is intended to prevent the liability on the part of the carrier or the infrastructure manager being changed through actions brought by auxiliaries.

11. In its 16th session, the Revision Committee decided, in principle, to introduce into the Basic Convention the identical provisions of the Appendices, in the form of common provisions (Report, pp. 7, 12 and 15). Consequently, the provisions concerning the applicable national law and unit of account are included in Articles 8 and 9 of COTIF (Report on the 17th session, 2nd meeting, p. 11/12 and Report on the 19th session, pp. 13-17).

12. In consideration of the place of jurisdiction as provided for in Article 46 of the CIM Uniform Rules and in Article 57 of the CIV Uniform Rules, as well the regulation provided for in Article 24, there remains the possibility that courts in different Member States are competent in respect of actions against the infrastructure manager. However, a definition of the national law, such as that provided for in Article 8 of COTIF, will probably not result in insurmountable legal difficulties. § 3 of this article includes a general remit, which means that the international private law of the State in which the person entitled asserts his rights is included in the remit. In view of the principle of "proper law" and of the unity of decision, which are valid in virtually all legal systems, and the fact that the basis of liability is regulated in a uniform manner, the scenario in which different rules would be applied by the courts is unlikely.

13. With regard to data protection (see the provisions set out in the Central Office draft of 1.7.1996), the Revision Committee considered that a regulation at international level was not necessary (see Report on the 9th session, p. 14).

14. The Revision Committee withdrew the provision, included in the Central Office draft, concerning the maximum amount of compensatory damages in the case of loss or damage of property. The parties to the contract consequently remain free to conclude agreements which share the risk between them (Report on the 9th session, p. 36).

15. With two amendments (see No. 3 of the remarks relating to Article 6 and No. 2 of the remarks relating to Article 8), the 5th General Assembly (26.5 - 3.6.1999) unanimously, with one abstention, adopted the texts decided by the Revision Committee.

16. In view of the development of European Union legislation in relation to the use of railway infrastructure, it was essential to adapt the CUI UR to ensure that they are compatible with EU law. At its 24th session (Berne, 23-25.6.2010), the Revision Committee adopted the necessary amendments. They entered into force on 1 December 2010. See the additional parts of the Explanatory Report below.

In particular

Title I

General Points

Article 1
Scope

1. § 1 does not limit the scope of application to contracts *for reward*. Contracts of use of railway infrastructure are not always necessarily contracts for reward. It is conceivable, in principle, that a railway infrastructure which is managed by, for example, a state authority, should be at the disposal of different carriers without a direct commercial consideration.

2. The CUI Uniform Rules are applicable only insofar as the purpose of the contract of use is international carriage by rail within the meaning of the CIM Uniform Rules and the CIV Uniform Rules. The Member States are nevertheless free to provide the same legal system for internal traffic.

3. The final sentence of § 1 states that the CUI Uniform Rules are also applicable to a railway infrastructuremanaged by a State or by governmental institutions. In the case of a "state" infrastructure, the contract of use is not necessarily a contract under civil law; it is also possible for it to be contract under public law. The latter, however, are also subject to the CUI Uniform Rules, particularly with regard to liability.

4. § 2 emphasises the fact that these Uniform Rules are concerned only with regulating the relationships of the parties to the contract with one another. As already stated in Nos. 7 to 9 of the General Points, a "parallelism" of competing actions against the auxiliaries of the parties to the contract is intended to exclude any possibility of circumventing the application of the CUI Uniform Rules. As one of the most important examples of the legal relationships which remain subject to the national law, § 2, letter a) states that the liability of employers or principals of auxiliaries towards the latter is not regulated by the CUI Uniform Rules, but by the national law.

5. See also the additional parts of the Explanatory Report below.

Article 2
Declaration concerning liability in case of bodily loss or damage

As in Article 2 of the CIV Uniform Rules, Article 2 provides that each State may declare non-application of the provisions concerning liability in case of death and injury when the accident has occurred on its territory and the victims are nationals of that State or persons whose usual residence is in that State (Report on the 17th session, 2nd meeting, p. 3; cf. also Article 3 CIV 1980). In keeping with Article 42, § 1, second sentence of COTIF, the declaration can be made at any time. Article 42, § 1, first sentence of COTIF provides for the possibility of also declaring at any time that a specified Appendix to the Convention will not be applied in its entirety.

Article 3
Definitions

1. These definitions serve to specify the material scope of application and to facilitate preparation of the texts.

2. The Revision Committee decided intentionally not to refer to Annex I, Part A of the (EEC) Commission Regulation No. 2598/70 of 18 December 1970 concerning the definition of the content of the different positions of the registration plans of Appendix I of the (EEC) Council Regulation No. 1108/70 of 4 June 1970 or to reinclude in letter a) the text of the definition of the term "railway infrastructure", as contained in the Directive 91/440/EEC. A more general definition is more appropriate since it allows account to be taken, as applicable, of any development in the subject and it prevents a European Community (EC) regulation from becoming law in all the Member States of OTIF through the CUI Uniform Rules, a law which would have to be amended if the regulation were amended (see Report on the 9th session, p. 6; Report on the 17th session, 2nd meeting, p. 4).

3. In French, there is no expression which is equivalent to the German legal term "Leute" ["people"], which includes both the servants and the other persons whose services one makes use of for accomplishment of one's tasks. The Central Office draft of 1 July 1996, in the interest of editorial simplification, consequently used the term "auxiliaries" (German: "Hilfspersonen") and defined the term (letter d) in accordance with the wording adopted for Article 40 of the CIM Uniform Rules in the 4th session of the Revision Committee (25 - 29.3.1996).

4. This term related only to persons in a dependent situation, in respect of whom the principal has a right of supervision and a right to issue instructions. According to the notion of the Central Office draft, any independent sub-contractors and suppliers were not to be included in this definition (Report on the 9th session, p. 26). In its 17th session, however, the Revision Committee enlarged this notion so that the term "auxiliaries" (German: "Hilfspersonen") encompasses the physical or moral persons to whom one has recourse for rendering of the service, irrespective of whether these auxiliaries are commercially dependent on the infrastructure manager or on the carrier (Report on the 17th session, 2nd meeting, p. 7/8).

5. A principal example which can be cited, as a third party within the meaning of the CUI Uniform Rules (letter e), are the contractual partners of the carrier, i.e., the consignor and the consignee (see also in No. 9 of the General Points). Actions brought by parties to the contract of carriage against the infrastructure manager are nevertheless subject to the conditions and limitations of the CIM Uniform Rules and the CIV Uniform Rule since, in future, the infrastructure manager is *declared ex lege* to be an auxiliary of the carrier (Article 40 CIM and Article 51 CIV).

6. In preparing all of the texts, the Revision Committee took care to avoid, as far as possible, the use of the term "person" (see Rev. Doc. 16/3 of 25.2.1998). For linguistic reasons, the Revision Committee nevertheless used this term [French: "personne"] in the French [and English] text to define the term "third party". It is evident that this term, in this context, includes moral persons.

7. The words “in which the carrier has the place of business of his principal activity”, used in letter f), correspond to the terminology of the Directive 91/440/EEC.

8. The definition in letter g) (“safety certificate”) clarifies that it is not a matter solely of the safety of vehicles, but that this certificate also relates to the internal organisation of the undertaking and to the personnel to be employed (cf. Directive 95/19/EC).

9. At its 24th session, the Revision Committee amended some of the definitions; see the additional parts of the Explanatory Report below.

Article 4
Mandatory law

1. As a rule, the CUI Uniform Rules are mandatory in nature and prevail over national law. The wording follows that of Article 5 of the CIM Uniform Rules.

2. There is contractual freedom with regard to the commercial conditions and the period of validity of the contract of use.

3. The final sentence, reincluded as it stands from Article 5 of the CIM Uniform Rules, allows the parties to the contract to extend their liability. The only provision made for limitation of liability is with regard to the maximum amount of compensation in case of loss or damages to property. A limitation of liability in case of bodily loss or damage would not be justified from the legal policy point of view.

4. See also the additional parts of the Explanatory Report below.

Title II

Contract of Use

Article 5
Contents and form

1. In the interest of legal clarity, § 1 sets out the principle according to which it is necessary to conclude a contract of use which, according to § 2, regulates the administrative, technical and financial conditions of use. The parties are, in principle, free to agree the content, particularly the scope of the use and of the respective services. The agreed result must, however, be stated in the contract.

2. § 2 intentionally refers to “financial conditions” since, in principle, it is conceivable that no direct charge for use is received (see No. 1 of the remarks relating to Article 1), but that the infrastructure manager makes the railway infrastructure available free of charge or that provision is made for other forms of benefit as “remuneration” in the private economy sense.

3. Stipulation of the form according to which the contract of use must be concluded in writing or in an equivalent form is justified in consideration of the importance of this contractual relationship and possible cases of litigation. However, non-

compliance with the stipulation regarding form as provided in § 3 does not affect the validity of the contract.

4. At its 24th session, the Revision Committee restructured this provision; see the additional parts of the Explanatory Report below.

Article 6
Special obligations of the carrier and the manager

1. The CUI Uniform Rules do not define the general obligation of the infrastructure manager to grant the carrier the use of the infrastructure in accordance with the contract concluded, since this is clear and therefore superfluous.

2. With regard to § 1, in the terms decided by the Revision Committee, it was objected that a licence should only be granted if there is a guarantee that the entire operation complies with the safety requirements (internal organisation, vehicles, personnel). It was furthermore objected that § 1 represents "an over-regulation" and that it gives the impression that as State could be obliged, contrary to its wishes, to make provision in its legislation for a specific safety certificate. At most, one could require proof of knowledge with regard to the fully safe use of the foreign infrastructure. That notwithstanding, the Revision Committee decided that, in addition to a licence, the carrier must also furnish a safety certificate, as applicable (Report on the 9th session, p. 18/19). A licence is granted irrespective of the infrastructure to be used.

3. The principle adopted by the 5th General Assembly (§ 1, first sentence), according to which the carrier must be authorised to exercise the activity of rail carrier, represents an obligation which, in general, comes within public law and which is or which is to be regulated elsewhere. Instead, in the CUI Uniform Rules, these provisions are declaratory in nature, their purpose being to remind the carrier of his obligations in this area. On the other hand, § 1, third sentence, grants the infrastructure manager a contractual right, in respect of the carrier, to require certain documents in proof.

4. The licence is not the only element of proof of capacity to exercise the activity of carrier. Suitability for the exercise of this activity can also be proved by an other means.

5. The carrier must notify the infrastructure manager, at the time of signature of the contract or in the course of its execution, of any event which is likely to affect the validity of his licence, the safety certificate or other elements of proof (§ 2).

6. Due to the possible extent of bodily loss or damages due to death or injury and loss or damages to property due to destruction or loss within the framework of the use of the railway structure, the infrastructure manager is granted the right (§ 3) to require proof of sufficient financial cover for such cases, despite the fact that, as a general rule, sufficient financial securities are necessary to obtain a rail transport undertaking concession. The infrastructure manager is at liberty to require such a proof or not. The self-insurance practised by certain railways can also be considered as an "equivalent provision" (Report on the 9th session, p. 20).

7. The introduction of similar obligations for the infrastructure manager was considered unnecessary by the majority of the Revision Committee (Report on the 9th session, p. 20). It is only with regard to the obligation to provide information (§ 4) that the infrastructure manager has the same obligations as the carrier (Report on the 17th session, 2nd meeting, p. 17/18).

Article 7 [12]
Termination of the contract

1. § 1 must be read in the light of the provisions contained in §§ 2 to 4 concerning termination of the contract without notice. [13]

2. Article 7 distinguishes between a rescission of the contract, without notice, by one of the parties to the contract, in accordance with §§ 2 and 3, and the possibility of the parties to rescind the contract without notice in accordance with § 4. In the latter case, they may agree between themselves the terms and conditions for the exercise of this right. This distinction is due to the fact that, originally, the draft text had made provision for an automatic cancellation of the contract of use if the carrier no longer has a valid licence or a valid safety certificate or if the infrastructure manager loses his right to operate the infrastructure (Report on the 9th session, pp. 21-24; Report on the 17th session, 2nd meeting, pp. 18-21).

3. § 5 regulates the consequence with regard to liability if the contract of use has been rescinded.

4. § 6 allows the parties to the contract to agree special conditions for rescinding the contract in case of delayed payment and in the case of non-compliance with the obligation of the carrier to provide notification of changes made. Furthermore, the carrier and the infrastructure manager may, by common agreement, provide for dispensations from § 5 concerning the consequences of rescission with regard to compensatory damages.

5. As a result of the decision of the 24th session of the Revision Committee to delete § 1, the comments on §§ 2 and 3 now relate to §§ 1 and 2, while §§ 4, 5 and 6 have become §§ 3, 4 and 5; see the additional parts of the Explanatory Report below.

12 Following a decision by the 24th session of the Revision Committee, the original heading “Duration of the contract” was amended.

13 As the 24th session of the Revision Committee decided to delete this paragraph, this note is only of historical significance. The rules concerning immediate rescission are now contained in §§ 1 to 3.

Title III

Liability

Article 8
Liability of the manager

1. § 1 stipulates the principle of the (strict) objective liability of the infrastructure manager. The person having suffered the damage (the carrier or his auxiliary) must prove the cause of the damage (management failure or infrastructure fault). In addition, that person must furnish proof that the damage was caused during the period of use of the infrastructure. The text adopted by the 5th General Assembly indicates even more clearly that the version adopted by the Revision Committee stipulates the principle of objective liability.

2. The text of § 1, letter b) states that liability for loss or damage to property does not include liability for (purely) pecuniary loss. An exception to these, according to § 1, letter c), is pecuniary loss resulting from damages payable by the carrier in accordance with the CIV Uniform Rules or CIM Uniform Rules. Damages suffered by means of transport are damages to property suffered directly by the carrier, even if these means of transport are not the carrier's property according to civil law, but are at the carrier's disposal by virtue of a contract in accordance with the CUV Uniform Rules (Report on the 5th General Assembly, p. 126/127).

3. Compensatory damages in case of death or injury of passengers which go beyond the damages regulated in Articles 11 and 12, particularly claims for compensatory damages for mental distress (*pretium doloris*) in accordance with Article 13, are determined by national law.

4. The parties to the contract can agree whether, and to what extent, the infrastructure manager is liable in respect of damages caused by a delay of disruption of operation (§ 4).

5. The infrastructure manager may be exonerated from the objective liability described above on the basis of the grounds for exoneration listed in § 2. The grounds for exoneration differ according to whether damages are bodily loss or damage (death, injury or any other impairment of physical or psychic integrity) or loss or damage to property (destruction of or damage to movable or immovable property). In the case of bodily loss or damage, the grounds for exoneration were constituted by analogy with the CIV Uniform Rules and, in the case of loss or damage to property by analogy with the CIM Uniform Rules, but without provision for privileged grounds for exoneration.

6. The words "in spite of having taken the care required in the particul circumstances of the case" had been introduced into the definition of "unavoidable event" at the time of the creation of the additional Convention of 1996 added to the CIV, in order to emphasise the nature of objective liability. The purpose of these words was to prevent the liability on the part of the railway in the case of death or injury of passengers for being transformed into a simple liability for fault with reversal

of the burden of proof. These words were withdrawn in the first reading, but reintroduced in the second reading (Report on the 9th session, p. 28).

7. The Revision Committee simplified the original wording of the draft, by retaining from the words “wholly or partly, to the extent” only the words “to the extent that” (Report on the 9th session, p. 28). The corresponding text of Article 26, § 2, letter b) of the CIV Uniform Rules was adapted to this new version in the 2nd reading.

8. § 3 must be read in the light of § 2, letter a), No. 2. Whereas, according to this provision, the infrastructure manager is partly liable to the extent that the accident is not a fault on the part of the person having suffered the damage, he is wholly liable if the accident is only partly due to the behaviour of a third party. He can thus be exonerated in full or not at all. This regulation was created by the additional Convention of 1996 added to the CIV and corresponds to Article 26, § 2, letter c) of the CIV Uniform Rules 1980. For linguistic and methodological reasons, this regulation will henceforth constitute the subject-matter of a separate paragraph.

9. Also examined was a proposal which sought to introduce an additional sentence (“a carrier using the same infrastructure is not considered as a third party”) into § 2, in letter a), No. 3. This proposal was withdrawn, since a comparison of this provision with Article 26, § 2, letter c) of the CIV Uniform Rules reveals that a parallel provision would not be justified (Report on the 9th session, p. 29).

10. With regard to the liability of the infrastructure manager in respect of damages caused to the carrier as a result of delay or disruption of operation (§ 4), see No. 4.

11. See also the additional parts of the Explanatory Report below.

Article 9
Liability of the carrier

1. According to this provision, the person who has suffered the damage (the infrastructure manager or his auxiliary) may, in accordance with the CUI Uniform Rules, enforce his rights for compensatory damages against the carrier, even if the damage has been caused by persons or goods carried. Any actions in tort (*ex delicto*) against persons carried or against clients responsible for goods carried are not subject to the CUI Uniform Rules (see also No. 8 of the General Points and No. 1 of the remarks relating to Article 19).

2. The grounds for exoneration have been constituted by analogy with the grounds for exoneration defined in Article 8, i.e., by analogy with the CIV Uniform Rules for bodily loss or damage (with the wording amendments mentioned in No. 7 of the remarks relating to Article 8) and by analogy with the CIM Uniform Rules for loss or damage to property, but without provision for privileged grounds for exoneration.

3. Actions for recourse by the carrier against third parties are not regulated in the CUI Uniform Rules. They are regulated either by the CIM Uniform and the CIV Uniform Rules, or by the applicable national law. Nor is direct recourse on the part of the carrier or his agents against third parties (e.g. the consignor or passengers)

regulated in the CUI Uniform Rules, this being subject instead to the CIM Uniform Rules, the CIV Uniform Rules or other provisions of the national law (see Nos. 7-9 of the General Points).

4. See also the additional parts of the Explanatory Report below.

Article 10
Concomitant causes

1. This article regulates liability when causes which are attributable to several involved parties have a concomitant effect. § 1 regulates the case in which causes which are attributable to the infrastructure manager and causes which are attributable to *one* carrier have had a concomitant effect which resulted in the damage. § 2 regulates the case in which there has been a concomitant effect between causes which are imputable to the infrastructure manager and to *several* carriers. § 3 regulates the case in which there has been only one concomitant effect between causes which are attributable to *several* carriers. Applicable to the three cases is the principle according to which pro rata liability exists only if the cause is known. In the cases of §§ 1 and 2, when the cause of the damage is not known, the party having suffered the damage (infrastructure manager, carrier) must bear his own damage, whereas in the case of § 3 the carriers involved are equally liable towards the infrastructure manager.

2. § 2 also includes in this regulation another carrier using the same infrastructure, when causes which are attributable to several carriers have contributed to the damage. In the opinion of the Central Office, an opinion shared by the Revision Committee (Report on the 9th session, p. 32), this is justified by the fact that it is necessary to take as a basis the principle that the other carrier using the infrastructure in question has himself also concluded a contract with the manager of the said infrastructure and that that contract is also subject to the CUI Uniform Rules, since only carriers in accordance with Article 3, letter c) are carriers within the meaning of this article. With regard to the basis of liability and the maximum amounts of liability, the principles of the CUI Uniform Rules are thus applicable to the two carriers involved in the damage.

3. In the case of involvement of rail transport undertakings which are not carriers within the meaning of Article 3, letter c), their relationships are regulated by the national law.

4. § 3 applies to cases in which no cause of damage is attributable to the infrastructure manager (see No. 1).

5. Only the carrier or carriers and the infrastructure manager are parties to the contract, but not their auxiliaries. Actions brought by auxiliaries against their employer or principal are subject to the national law (see No. 8 of the General Points).

Article 11
Damages in case of death

With regard to counts of loss, this provision was constituted following the example of the provision of the CIV Uniform Rules applicable in the case of death or injury of passengers. In the case of bodily loss or damage caused by the carrier or caused by the infrastructure manager, the applicable regulation is identical.

Article 12
Damages in case of personal injury

See the remarks relating to Article 11.

Article 13
Compensation for other bodily harm

Contrary to that which has been provided in the case of loss or damage to property, compensation for indirect damages, particularly for mental distress (*pretium doloris*) is not excluded in the case of bodily loss or damage; this is regulated by the national law. Although the national law determines whether and, if applicable, to what extent compensatory damages can be claimed for injury other than that provided for in Articles 11 and 12, these rights are always *substantively* limited by the conditions of liability of Articles 8 and 9. If the manager of the infrastructure or the carrier can be exonerated from their substantive liability, the national law is not able, either, to grant a right to compensation for other damages.

Article 14
Form and amount of damages in case of death and personal injury

1. This regulation, likewise, was constituted following the example of the provisions of the CIV Uniform Rules concerning the carrier's liability in the case of death or injury of passengers.

2. The amount mentioned in § 2 is not a maximum amount, as is the case for the other limitations of liability, but a *minimum* amount. If the national law does not make provision for limitation of the amount of compensatory damages, or if the maximum amount provided for by the national law exceeds the amount provided for in the CUI Uniform Rules, this provision does not apply. On the other hand, if the national law makes provision for a maximum amount which is less than the amount to be awarded in the form of capital, as provided for in unit of account, then this amount is increased in accordance with the provisions of the CUI Uniform Rules. At 175,000 units of account (see Article 9 COTIF), the amount provided for is the same as in Article 30, § 2 of the CIV Uniform Rules.

3. The Revision Committee initially rejected the possibility of a reservation by Member States in the case of involvement of their own nationals (Report on the Ninth session, p. 35). The Revision Committee returned to this question in the second reading (Report on the 17th session, 2nd meeting, p 3; see also the remarks relating to Article 2).

Article 15
Loss of right to invoke the limits of liability

This provision, included in the Central Office draft of 1 July 1996, was withdrawn on the first reading (Report on the 9th session, p. 36), then reintroduced on the 2nd reading. In the case of misrepresentation or qualified fault, it is to be possible to go beyond the maximum amounts provided for the national law (Report on the 17th session, 2nd meeting, p. 28/29).

Article 16
Conversion and interest

This provisions was constituted following the example of Article 37 of the CIM Uniform Rules and corresponds to Article 47, §§ 1 and 2 of the CIM Uniform Rules 1980, in the terms of the 1990 Protocol.

Article 17
Liability in case of nuclear accidents

The text of this article corresponds to Article 49 of the CIM Uniform Rules 1980.

Article 18
Liability for auxiliaries

For the definition of this term, see No. 3 of the remarks relating to Article 2.

Article 19
Other actions

1. This provision corresponds to Article 51 of the CIM Uniform Rules 1980 and, in its 4th session, the Revision Committee reincluded it in Article 41 of the CIM Uniform Rules. See the remarks relating to this article.

2. Any other direct actions against liable parties other than the infrastructure manager or the carrier or their auxiliaries, e.g., against the consignor who has caused damage to the infrastructure as a result of defective loading, are not subject to the CUI Uniform Rules. Consequently, they are not subject to the restrictions of Article 19. These actions are regulated by the national law (see No. 8 of the General Points).

Article 20
Agreements to settle

In order to avoid long and costly investigations into the causes of damage which would cause disruptions of operation and also to avoid litigation, the parties have the possibility of concluding agreements concerning, for example, contractual compensatory damages, sharing of liability or reciprocal waiver of enforcement of their right to compensatory damages. These agreements concern only the parties to the contract and cannot be concluded to the detriment of third parties (e.g., auxiliaries) (Report on the 9th session, pp. 38, 39).

Title IV

Actions by Auxiliaries

Article 21
Actions against the manager or against the carrier

1. The auxiliaries of the infrastructure manager do not have any contractual relationship with the carrier and there is no contractual relationship between the auxiliaries of the carrier and the infrastructure manager. That notwithstanding, the CUI Uniform Rules also regulate actions by these persons against the other party to the contract of use. The objective, again, is that auxiliaries are only permitted to bring an action for compensatory damages within the conditions and limitations provided for in the CUI Uniform Rules. On the other hand, actions by auxiliaries against their employers or principals are not regulated in the CUI Uniform Rules (see No. 8 of the General Points).

2. Article 21 regulates only actions by auxiliaries against the other party to the contract of use, but not those against third parties in the sense of the definition in Article 3, letter e).

Title V

Assertion of rights

Article 22
Conciliation procedures

1. In consideration of the particularities of the contract of use, it could be expedient to create special institutions with responsibility for conciliation procedures. Insofar as the parties to the contract of use make provision for arbitration based on this provision, such procedures must be implemented within the framework of the respective national law, unless the parties have agreed to have recourse to the court of arbitration provided for under Title V of COTIF.

2. With regard to debarment by limitation (Article 25, § 5), the effect of a conciliation procedure agreed by the parties to the contract of use is uniformly regulated at international level.

3. See also the additional parts of the Explanatory Report below.

Article 23
Recourse

This provision is modelled on Article 62 of the CIM Uniform Rules 1980 (Article 51, § 1 CIM), its purpose being to prevent divergent actions for recourse.

Article 24
Forum

1. The CUI Uniform Rules provide that the parties to the contract can agree the competent court. The courts of the Member State in which the infrastructure manager has his place of business office have subsidiary competence only.

2. The courts of the Member State in which the infrastructure manager has his place of business office are competent irrespective of whether the latter is the defendant or the plaintiff. The reason for this rather unusual regulation of the forum was the expediency of concentrating on the place of the accident any investigations of which the result could be used in several parallel procedures. The technical particularities of the infrastructure in the different Member States were also put forward as an argument (Report on the 9th session, p. 43).

Article 25
Limitation of actions

1. The customary period of limitation in connection with the carrier's liability (one year) seems too short, since litigation could be very complex.

2. The special provision of § 3 in the case of death of persons, which provides for an absolute period of limitation of five years, was taken from the CIV Uniform Rules.

3. § 4 provides for an additional period for recourse actions. This period allows waiting for the outcome of the initial procedure. This regulation corresponds to Article 20, § 5 of the Hamburg Rules.

4. With regard to § 5, see No. 2 of the remarks relating to Article 22.

5. § 6 is aligned to article 60, § 6 of the CIV Uniform Rules and to Article 48, § 5 of the CIM Uniform Rules.

Additions to the Explanatory Report

based on the decisions of the 24th session of the Revision Committee (Berne, 23-25.6.2009) and the 9th General Assembly (Berne, 9/10.9.2009)

NOTE: The general remarks and the remarks on individual provisions in this Explanatory Report contain a summary of the information in relation to the following points:

a) Background to and justification for the amendments that were submitted to the Revision Committee and adopted by it, and

b) Discussion on the provisions for the amendment of which the General Assembly is responsible in accordance with Article 33 § 2 and § 4 letter (e) of the Convention, including editorial amendments.

The information referred to in

a) has been examined and approved by the Revision Committee, together with the approved amendments and the General Assembly has noted them;

b) has been examined and approved by the General Assembly following the Revision Committee's considerations and recommendations in this respect.

General Points

1. Decisions taken by the General Assembly at its 7th and 8th sessions in support of initiatives to solve the legal and practical problems between European Community (EC) law and COTIF envisaged that in relation to Appendices to COTIF other than F and G outstanding issues should be addressed at the appropriate level in order to find practical solutions which may lead to the creation of appropriate working groups.

2. In accordance with these decisions and with an initiative by the Council "Land Transport" working group of 12 December 2007 an ad hoc working group concerning Appendix E (CUI) was established (consisting of representatives of the European Commission, the OTIF Secretariat and legal experts from European Union (EU) Member States and Switzerland, hereinafter the "CUI Group") in order first to review the respective legal regimes and identify areas of potential difficulty and then to propose practical solutions.

3. In several meetings the CUI Group identified and discussed contested areas of incompatibility between EC law and the CUI and agreed a number of suggestions for amendments to the CUI in order not only to deal with such areas but also to clarify certain parts of the CUI, which in part, caused legal difficulties between the two regimes. These amendments and clarifications concern

- the scope of application,
- the definitions of "manager", "carrier", "licence" and "safety certificate",
- the provisions on the contract of use,

- the special obligations of carriers and managers,
- liability for loss or damage caused by delay / disruption of operations and
- conciliation procedures.

4. The primary aim of the amendments suggested by the CUI Group has been to take account of developments in the legislation of the EU including those instruments which, at the time when CUI was adopted, were not yet in force, e.g. Directives 2001/14/EC, 2004/49/EC and 2004/51/EC as well as Regulation EC/1371/2007.

5. Furthermore, this Explanatory Report gives notice that international rail operations entering into the EU from non EU Member States are subject to EU law in addition to any existing obligation under COTIF. The Report is drafted so as to be taken to be "supplementary means of interpretation" as understood by Article 32 of the Vienna Convention on the Law of Treaties 1969. It is further intended to highlight those areas of legal ambiguity or uncertainty caused by the existence of two separate systems of law which have been identified to overlap in some respects and therefore gives notice to operators of the existence of EU legislative provisions.

6. When the Explanatory Report refers to EU Member States, it also applies *mutatis mutandis* to States where the Community legislation applies as a result of international agreements with the European Community.

7. The Revision Committee followed to a large extent the suggestions made by the CUI Group. The wording of the definition of "licence" was however modified in order to better match the meaning of this term in the law of the EU, and in the proposed Article 5bis (law remaining unaffected), a distinction was made between the liability provisions in Articles 8 and 9 of the CUI where only the law of the EU remains unaffected but not national law and provisions of other Articles where national law also remains unaffected (for details see the relevant particular remarks).

8. The 9th General Assembly (Berne, 9/10.9.2009) noted the results of the 24th session of the Revision Committee concerning the amendments to Appendix E (CUI) of the Convention and the Explanatory Report and approved the Explanatory Report on Articles 1, 4, 8 and 9 of CUI. It noted that these amendments are not decisions to which Article 34 of the Convention applies and instructed the Secretary General with regard to bringing these amendments into force to proceed in accordance with Article 35 of COTIF. It also authorised the Secretary General to summarise its decisions on the results of the Revision Committee in the general part of the Explanatory Report.

In particular

Title I

General Provisions

Article 1
Scope

1. According to § 1, the CUI Uniform Rules (UR) are applicable insofar as the purpose of the contract of use of railway infrastructure is international carriage by rail within the meaning of the CIV UR and the CIM UR.

   a) In this context the term “carriage” has the same meaning as in other transport law conventions, such as CMR, Warsaw and Montreal Convention, Hamburg Rules and Athens Convention.

   b) Regarding the term “international carriage within the meaning of the CIV UR and the CIM UR” see explanatory notes with regard to Article 1 CIV and Article 1 CIM.

   c) The question of whether a “national” or a “foreign” railway undertaking/carrier is using the infrastructure is irrelevant with regard to the application of CUI.

   d) CUI also applies to the use of the railway infrastructure in those States where there has been no separation of infrastructure management from the provision of transport services and hence where an integrated undertaking is working in both areas of railway operation, in so far as foreign railway undertakings are allowed access to the infrastructure in these States.

2. The expression “for the purposes of” (CIV/CIM international carriage) in § 1, makes it clear that the purpose of use is a crucial point. So it does not mean, for example, “during the performance” of international carriage by rail. Therefore, use for the purpose of preparations before the train is made ready and dispatched (before the first passenger gets into the train or the goods are loaded) and for the purpose of the work carried on once carriage has been completed (e.g. cleaning and empty returns) are also included in the scope of the contract of use as long as these actions are linked to subsequent or preceding carriage under CIV or CIM.

3. Whilst the CIV/CIM UR refer to the performance of carriage on the basis of a contract of carriage which concerns each single passenger and each single consignment of goods, the use of infrastructure usually concerns carriage of trains containing a number of passengers and consignments. Among these, there might be passengers carried under a contract according to CIV as well as other passengers to whom CIV does not apply. The same goes for a train in which there might be consignments carried under a contract pursuant to CIM as well as other consignments to which CIM does not apply.

4. When it comes to claims for indirect damages, for example, under Article 8 § 1 (c) of CUI:

   a) as regards passengers with national tickets who receive compensation from the carrier under national law, the carrier will have a right of recourse against the infrastructure manager under national law, and,

   b) as regards passengers with CIV tickets who receive compensation from the carrier under CIV, the carrier will have a right of recourse against the infrastructure manager under CUI.

5. The same approach would apply *mutatis mutandis* to claims for damage to freight.

6. There are however differing views on the scope of application of CUI to the case of direct damage. The scope of application of CUI to the case of direct damage may need further clarification in each specific case.

7. Bearing in mind that the scope of application of CUI in any case partly overlaps with that of corresponding EU law or corresponding domestic law provisions in several other Articles of CUI where a potential misunderstanding could arise with regard to such law are modified accordingly and additional information is given in the Explanatory Report.

Article 3
Definitions

1. The definition of the term “manager” in letter b) was broadened to make clear that where the law of the EU or corresponding domestic law applies, a person falling under the definition has to be aware of all respective obligations.

2. The definition of the term “carrier” in letter c) was broadened to make clear that where the law of the EU or corresponding domestic law applies, a person falling under the definition has to be aware of all licensing obligations. In particular, non-EU carriers have to note that, when contracting with infrastructure managers of EU Member States as “railway undertakings” under the law of the EU, they are subject to EU obligations, in particular licensing and safety certification requirements.

3. The modified definition of the term “licence” in letter f) better matches the meaning of this term in the law of the EU (see Directive 95/18/EC). Furthermore it is clarified that the licence needs to be issued by a State. It is also stated that for the relevant authorisation the law in force in the State of issuance is applicable. If that law is that of the EU or corresponding domestic law, the relevant conditions, in particular the requirement for licensing and safety certification, have to be met, see also the remarks on letters c) and g).

4. The wording of the definition of the term “safety certificate” in letter g) is aligned with the corresponding wording in the other modified definitions. In substance it was already clear from the wording adopted by the 5th General Assembly in

1999 that the safety certificate has to be based on the law applicable at the location of the infrastructure, including the law applicable in the EU Member State where the infrastructure is located.

Article 4
Mandatory law

In the context of this Article the term “stipulation” does not refer to any requirement laid down in any other place than in the CUI contract. It does not refer to any legal provision applicable in the EU, its Member States or any other State. As to potential conflicts of the CUI provisions concerning the contract itself, particularly with the law of the EU, see remarks on Article 5.

Title II

Contract of Use

Article 5
Contents and form

8. 1. In its modified form, § 1 refers not only to the carrier but also to other persons entitled to enter into a contract of use of the infrastructure. This takes account of the fact that according to the law of the EU not only a carrier but also an “applicant” as authorised under Article 16.1 of Directive 2001/14/EC (e.g. a public transport authority, freight forwarder, combined transport operator or a shipper), who is not at the same time a carrier, is entitled to enter into an agreement with the infrastructure manager on the use of the infrastructure.

9. 2. § 2 no longer contains a list of details which are included in a contract as a matter of a rule in order to ensure that, where such details are already regulated by the law applicable in the State where the infrastructure is located, and in particular that of an EU Member State, clauses containing those details are not reproduced. Instead it is now required to state that the contract shall contain all details which are necessary for the parties to the contract to determine comprehensively the administrative, technical and financial conditions of use such as the description of the infrastructure to be used, the period for which the contract is valid and the fees for the use. For restrictions which, with regard to various contents of the contract would be applicable under the law of the State in which the infrastructure is located, see remarks on Article 5bis.

Article 5bis
Law remaining unaffected

1. § 1 of this new provision indicates unaffected obligations based on provisions, in particular in the areas listed in § 3. These provisions are contained in the law of the EU but may also be contained in the domestic law of OTIF Member States which do not apply Community legislation. Such obligations have to be met by the parties to the contract of use of the infrastructure and are not superseded by the provisions of the CUI listed in the introduction to § 1.

2. § 2 has the same intention as § 1. However the obligations remaining unaffected by the liability provisions of the CUI listed in the introduction to § 2 are only those which have to be met in an EU Member State or in a State where the Community legislation applies as a result of international agreements with the European Community, but do not concern the domestic law in an OTIF Member State which does not apply Community legislation.

3. § 3 contains a non-exhaustive list of the areas which the obligations indicated in §§ 1 and 2 concern. In this sense,

   a) the 1st indent is important with regard to the issues addressed in Articles 5 and 7, i.e. agreements to be concluded between railway undertakings or authorised applicants and infrastructure managers (see Directive 2001/14/EC),

   b) the 2nd and 3rd indents are important with regard to the issues in Article 6 §§ 1 and 2, i.e. licensing (see Directive 95/18/EC) and safety certification (see Directive 2004/49/EC),

   c) the 4th indent is important with regard to the issue in Article 6 § 3, i.e. insurance (see Directive 95/18/EC),

   d) the 5th and 6th indents, i.e. performance schemes, are important with regard to the issues in Articles 8 § 4 and 9 § 4 to minimise delays and disruptions and to improve the performance of the railway network and compensation in favour of customers (see Directive 2001/14/EC and Regulation EC/1371/2007), and

   e) the 7th indent is important with regard to the issue in Article 22, i.e. dispute resolution (see Directive 2001/14/EC and Article 292 of the EC Treaty).

Article 6
Special obligations of the carrier and the manager

The drafting of Article 6 § 1 has been modified very slightly. The issues in this Article for which, where the law of the EU or corresponding domestic law applies, certain legal provisions have to be observed are dealt with in the 2nd, 3rd and 4th indents of § 3 in the new Article 5bis.

Article 7
Termination of the contract

§ 1 was deleted and the heading adapted to the content of the remaining provisions. This modification takes account of the fact that where the law of the EU or corresponding domestic law applies, the duration of the agreement on the use of the infrastructure is always limited. The limit is expressed as one working timetable period or in specific cases more than one such period. This issue is also dealt with in the first indent of the new Article 5bis.

Title III

Liability

Article 8
Liability of the manager

and

Article 9
Liability of the carrier

With reference to Article 8 § 4 and Article 9 § 4 the issue of performance schemes as well as of standardised and immediate compensatory measures in favour of customers in so far as the latter are relevant in the contractual relation of the parties to the contract of use of infrastructure for which, where the law of the EU applies, certain legal provisions have to be observed, is dealt with in the fifth and sixth indents of the new Article 5bis.

Title V

Assertion of rights

Article 22
Conciliation procedures

The issue in this Article for which, where the law of the EU applies, certain legal provisions have to be observed, is dealt with in the 7th indent of the new Article 5bis.

Uniform Rules concerning the Validation of Technical Standards and the Adoption of Uniform Technical Prescriptions applicable to Railway Material intended to be used in International Traffic (APTU)

Explanatory Report [14]

General Points

Background

1. Within the framework of the mandate of the 3rd General Assembly (14 - 16.11.1995) of the Intergovernmental Organisation for International Carriage by Rail (OTIF) concerning the revision Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, the Central Office also dealt with the problem of the technical admission of railway vehicles and the validation of technical standards applicable to rail stock. In future, it will no longer be possible to grant to the rail undertakings the competence to legislate in a mandatory manner in these areas, as is *de facto* currently the case in numerous States. To avoid repetition, reference is made to the following documents:

   - Explanatory report on the draft of a new COTIF (Annexes 3 to 4 to the circular letter of 30.8.1996, A 50.00/517.96)

   - General Assembly documents AG 4/5.3 (aim of the Organisation, validation of technical standards) and AG 4/5.4 (aim of the Organisation, uniform procedure for Technical Admission of Railway Material) of 2 June 1997, submitted to the 4th General Assembly (8 - 11.9.1997).

   - Explanatory report on COTIF in its new version

   - Explanatory report on the Uniform Rules concerning Technical Admission of Railway Material Used in International Traffic (ATMF - Appendix G to the Convention).

2. The 4th General Assembly of OTIF:

   - had noted that “technical harmonisation, in as wide a geographical scope as possible, is a fundamental task in enabling the rail sector to be capable of undertaking international transport without obstacles”

   - had considered that “for the devising of technical standards, it is essential to have recourse to the expertise and experience of the relevant organizations”

   - had instructed “the Central Office and Revision Committee to examine, in particular, and in collaboration with the other organisations involved,

14 The articles, paragraphs, etc. which are not specifically designated are those of the APTU Uniform Rules; unless otherwise evident from the context, the references to the reports on sessions not specifically identified relate to the sessions of the Revision Committee.

the problems of the validation of technical standards in the rail sector and of the technical admission of railway material used in international traffic, in order to present for the information of the General Assembly the solutions which are possible at international level".

3. In executing this mandate, the Central Office invited technical experts to participate in a meeting which was held in Bern on 2 and 3 December 1997. On the basis of the results of these deliberations, the Central Office prepared a draft "Uniform Rules concerning the Recognition and Validation of Technical Standards and the Adoption of Uniform Technical Prescriptions Applicable to Railway Material Intended to be used in International Traffic (APTU - Appendix G [15] to the Convention)". This draft was sent by the circular letter of 19 December 1997 to the governments of the Member States and to the interested international organisations and associations.

4. The Revision Committee examined this draft in its 15th session (2 - 6.3.1998). Although a quorum was present, the Revision Committee conducted only indicative voting, since the texts that had been dealt with were to be re-examined in the light of the proposals of the European Commission for technical harmonization in so-called conventional rail traffic, announced for the autumn of 1998 (see No. 15). The unanimous opinion was that it is necessary to avoid any divergence between Union law and the law that is to be applicable in future within the framework of OTIF (see Nos. 15-22).

5. In its 18th session (25 - 28.5.1998), the Revision Committee conducted a 2nd reading of the APTU Uniform Rules, but again for indicative purposes only, particularly since the necessary quorum was not achieved (16 of the 39 Member States were represented).

6. Following completion of the 2nd reading, other substantive proposals were submitted in the course of the drafting work. These proposals were dealt with in two sessions of the Revision Committee (22nd session, 1 - 4.2.1999 and 23rd session, 23.3.1999).

7. The 5th General Assembly (26.5. - 3.6.1999) received approximately a dozen submitted proposals and suggestions, sometimes identical in content, from the States, the international organisations and associations and from the Central Office. These proposals and suggestions resulted in amendments to Articles 2, 3 and 8 (see No. 2 of the remarks relating to Article 2, No. 2 of the remarks relating to Article 3 and no. 2 of the remarks relating to Article 8). The texts, amended thus, were adopted unanimously, less one abstention, by the General Assembly (Report on the 5th General Assembly, p. 184).

Basic concept

8. It is necessary to distinguish between, on the one hand, the devising of uniform technical prescriptions and technical standards and, on the other hand, validation. The devising of technical standards (standardisation) must not and cannot come within

15 Currently Appendix F

the remit of OTIF. Rather, the devising of technical standards must remain within the scope of competence - but not necessarily the exclusive competence – of the existing standardisation bodies, such as the European Committee for Standardisation (CEN), the European Committee for Electrotechnical Standardisation (CENELEC), the European Telecommunications Standardisation Institute (ETSI), etc., in collaboration with the rail transport undertakings, the infrastructure managers and the manufacturers of railway material, in order to benefit from the expertise of the latter.

9. The devising of uniform technical prescriptions for the construction and operation of railway material, which do not have the character of technical standards, continue to come within the remit - but again, not necessarily exclusively - of the associations of the rail transport undertakings, infrastructure managers and manufacturer of railway material (e.g. the International Union of Railways - UIC, the Organisation for Railways Co-operation - OSJD and the Union of European Railway Industries - UNIFE).

   At its 24th session (Berne, 23-25.6.2009), the Revision Committee decided to establish full compatibility between the EU's Technical Specifications for Interoperability (TSI) and the Uniform Technical Prescriptions (UTP) adopted by OTIF's Committee of Technical Experts. This is attended by amendments to the procedure for the adoption and publication of the UTP; see the additional parts of the Explanatory Report below.

10. Apart from their Annexes, the APTU Uniform Rules contain rules of procedure. Their principal purpose is the validation or adoption and introduction into the Annexes of the APTU Uniform Rules of the technical standards and uniform technical prescriptions devised by the above-mentioned bodies. The technical standards and uniform technical prescriptions listed in the Annexes constitute the substantive bases for the construction and operation/use of railway material and for the admission procedure in accordance with the ATMF Uniform Rules (Appendix G to the Convention).

    At its 24th session, the Revision Committee decided not to publish the Uniform Technical Prescriptions (UTP) and validated technical standards adopted by OTIF's Committee of Technical Experts as Annexes to the text of APTU, but to publish them on the Organisation's website; see the additional parts of the Explanatory Report below.

11. It is the APTU Uniform Rules which create the necessary preconditions for uniform regulation of the procedure according to which the authorities of the Member States undertake technical admission of vehicles and other railway material intended to be used in international traffic. As a result, a technical admission granted in one Member State will be recognised by the other Member States of OTIF without the need for new procedures. A common basis for the procedure of technical admission of railway material can only exist if mandatory uniform standards and technical prescriptions are created in all the Member States of OTIF for the construction and operation/use of railway material.

12. The validation of technical standards and the adoption of uniform technical prescrip-

tions, as a mandatory legal basis for the approval procedure, must therefore be performed at state level, with OTIF as the appropriate Organisation.

13. Due to the decision of the 5th General Assembly, according to which the Committee of Technical Experts can only adopt, without amending, or reject but not amend in any case, not only technical standards, but also uniform technical prescriptions (Article 20, § 3 COTIF), terminological distinction between "validation" and "adoption" loses its meaning to a large extent. That notwithstanding, the General Assembly did not make editorial amendments.

At its 24th session, the Revision Committee decided that technical standards may be validated by including them in Uniform Technical Prescriptions (UTP). If they are not included, technical standards must be validated; see the additional parts of the Explanatory Report below.

Relations between OTIF and the European Community (EC)

14. On 23 July 1996, the Council of the EC adopted the Directive 96/48/EC on the interoperability of the trans-European high-speed rail system. This directive is based on Article 129 D, indent 3 of the EC Treaty, in the terms of the Maastricht Treaty.

15. The European Commission, in its various publications dealing with transport policy, has repeatedly expressed its intention to submit proposals on the subject of the harmonisation and the development of technical specifications in the area of conventional rail traffic also. This was confirmed by the representative of the European Commission who participated in the deliberations concerning the drafting of the APTU Uniform Rules and the ATMF Uniform Rules within the Revision Committee. The publication of the EC's ideas was planned for October 1998, but had still not taken place by the closure of the 5th General Assembly.

16. In the opinion of the large majority of the Member States and the Central Office, it is necessary in any case to avoid conflict or incompatibility between the system which the EC plans to develop and the concept devised within the framework of OTIF.

17. Irrespective of the problem of whether, and to what extent, the provisions of the EC Treaty (Article 75, Article 100, Article 129 B to D) and compliance with the principle of subsidiarity allow the EC to regulate in detail the "technical complex" in the area of conventional rail traffic, the question in this case is not one of whether there is a conflict of competence between the EC and OTIF. Rather, it is a question at the very most of whether and, if applicable, to what extent the - currently – 15 Member States of the EC are still empowered to act autonomously in this area within OTIF from the point at which the EC exercises whatever powers it may have by presenting a proposed regulation, directive or decision. In this context, the question of whether and, if applicable, according to what terms and conditions the EC may accede to COTIF, is also of definite interest. The Central Office had prepared a draft text on this subject, which had been agreed by the Revision Committee (see Article 38 of the draft COTIF, General Assembly document AG 5/3.2 of 15.2.1999) and the principle of which was adopted by the 5th General Assembly (see remarks relat-

ing to article 38 of COTIF). The fact of creating the possibility of accession does not in any way prejudice the question of whether the EC will make use of such accession.

18. The system devised within the framework of OTIF with a view to harmonising and developing technical standards and uniform technical prescriptions in the area of international rail traffic is limited, essentially, to a validation. It is intentionally not based on the methods and procedures provided for in the Directive 96/48/EEC. The system of the APTU Uniform Rules devised by OTIF does not create new agencies and bodies for the development and preparation of technical standards and uniform technical prescriptions, but leaves that task, as is currently the case, to the national or international standardisation agencies (e.g., CEN, CENELEC, ETSI) as well as to the industry B both manufacturers and users B and its associations (e.g., UIC, OSJD and UNIFE); on this point, there is a parallel with the above-mentioned directive.

The amendments adopted by the 24th session of the Revision Committee (see remark at the end of paragraph 9) also have a bearing on the OTIF system referred to; see the additional parts of the Explanatory Report below.

19. Rather, with regard to the harmonisation and development of technical standards and uniform technical prescriptions, OTIF's concept can be compared to the "Agreement concerning the adoption of uniform technical specifications applicable to wheeled vehicles, equipment and parts which can be fitted or used on a wheeled vehicle and the conditions of reciprocal recognition of approvals issued in accordance with these specifications" of 20 March 1958 (Geneva Agreement of 1958 on homologation).

The amendments adopted by the 24th session of the Revision Committee (see remark at the end of paragraph 9) also have a bearing on the OTIF concept referred to; see the additional parts of the Explanatory Report below.

20. OTIF noted with interest the fact that in 1998, the EC, as such, became a contracting party of the Geneva Agreement on homologation, and welcomes this. This case could serve as a precedent for the EC's accession to OTIF. This would apply particularly if the EC were to decide not to have its own system of harmonisation and development of technical prescriptions for conventional rail traffic (with the exception of high-speed traffic) and were to decide to participate actively in OTIF's work. The scope of application of the APTU Uniform Rules and the ATMF Uniform Rules, devised within the framework of OTIF, will extend beyond the geographical area of the EC. Including the current number of Member States of OTIF, it will extend over 39 States in Europe, North Africa and the Near East, provided, of course, that none of these States declares a reservation against these new Appendices (see Article 42 COTIF).

The amendments adopted by the 24th session of the Revision Committee take account of the development in the EU that has taken place in the meantime; see the additional parts of the Explanatory Report below.

21. In the case of the Council Directive 96/49/EC on the reconciliation of the legislations of the Member States with regard to the carriage of dangerous goods, the EC has embarked on a course which was greatly approved of by the 39 Member States of OTIF and which has proved its worth. The EC has decided not to devise its own legal regulations of a technical nature in respect of the carriage of dangerous goods and has adopted in its entirety, in the form of an Appendix to the Directive 96/49/EC, the Regulations concerning the International Carriage of Dangerous Goods by Rail (RID) which, within OTIF, is continuously developed and adapted to scientific and technical progress in close co-operation with the United Nations Economic Commission for Europe (UNECE), in consideration of the European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR).

22. The concept of the APTU Uniform Rules and the ATMF Uniform Rules, developed within the framework of OTIF, affects not only transport policy but also policy relating to transport safety, industry and competition. It is in line with the policy pursued hitherto by the EC in the areas of transport, industry and competition, namely: internal market, liberalisation of transport, legal harmonisation, technical harmonisation and neutrality in matters of competition.

Committee of Technical Experts

23. The procedure for validation of technical standards and adoption of uniform technical prescriptions has been designed to be as flexible as possible, following the example of the RID amendment procedure.

24. Decisions are taken by the Committee of Technical Experts as provided for in the Basic Convention (see Article 20 COTIF). Represented in this Committee, with a seat and voting rights, are all the Member States and any regional economic integration organisations which have acceded to COTIF (e.g. the EC).

25. The creation of the Committee of Technical Experts and the principal questions of procedure, including the provisions relating to the implementation of decisions, are regulated in the actual Convention (see Articles 20, 33 and 35 COTIF).

Technical Annexes [16]

26. Originally, the objective of the work of the Central Office was to submit to the 5th General Assembly texts which had been discussed and approved by the Revision Committee, not limited solely to the APTU Uniform Rules and ATMF Uniform Rules. However, provision was made to reinclude in the Annexes of the APTU Uniform Rules, as far as possible, after necessary rewording, the technical standards and prescriptions which already exist and to have these adopted by the 5th General Assembly. This concerned, in particular, the International Convention on the Technical Unity of Railways (UT) of 1882/1938, the technical prescriptions of the Regulation for the Reciprocal Use of Wagons (RIV) and of Carriages and Vans

16 As a result of the amendments adopted by the 24th session of the Revision Committee, the explanations under this heading are manly of historical significance ; see the additional parts of the Explanatory Report below.

(RIC) in International Traffic and the technical leaflets of the UIC, which are mandatory for railways.

As a result of the amendments adopted by the 24th session of the Revision Committee (see remarks at the end of paragraphs 9 and 10), the explanations under this heading are mainly of historical significance; see the additional parts of the Explanatory Report below.

27. The preparation of the Annexes of the APTU Uniform Rules does, however, involve a considerable work-load. In March 1998 the UIC declared that it was prepared to undertake the preliminary work. At the 18th session of the Revision Committee (25 - 28.5.1998), a representative of the UIC presented the preliminary work for the introduction of the technical prescriptions of the RIV and RIC and of the UIC technical leaflets into Annex 1 to 7 (currently 8, see No. 2 of the remarks relating to Article 8) of the APTU Uniform Rules. On the request of the Central Office, the UIC had prepared a document intended to give the Member States, by way of example, an idea of the manner in which the Annexes of the APTU Uniform Rules could be drafted. This document was available to the delegates to the 5th General Assembly (General Assembly document AG 5/3.22 of 21.5.1999).

28. Since the Technical Annexes contain provisions whose adoption and amendment comes within the exclusive scope of competence of the Committee of Technical Experts, this work did not affect the course of the work for the preparation of the decisions of the General Assembly.

29. The majority of the work connected with the preparation of the Annexes of the APTU Uniform Rules cannot be completed until after the 5th General Assembly. Due to the volume of these Annexes, a legal technical solution was adopted similar to that chosen in the revision of the CIV and CIM Conventions in 1980 for Annex I of Appendix B to COTIF 1980 (RID).

30. The Committee of Technical Experts, however, should decide upon the Annexes of the APTU Uniform Rules immediately after the entry into force of COTIF, in accordance with Article 8, § 3. The preparatory work relating to this should be undertaken by an appropriate agency, composed of representatives of governments and experts, which - subject to the granting of financial means by the Administrative Committee - would be able to sit formally as a Revision Committee, in accordance with the COTIF in force, but without taking definitive decisions.

31. The current provisions will remain until the new COTIF and all the new provisions come into force (see No. 26).

32. The medium to long-term objective would be to create a regulation which is broadly uniform in respect of the construction and operation of railway material, applicable to all railways in the Member States of OTIF.

In particular

Article 1
Scope

1. The draft regulates procedure with regard to:

   - the "*validation*" of technical standards, and

   - the "*adoption*" of uniform technical prescriptions in general.

   See, however, No. 13 of the General Points.

2. However, the group of experts mentioned in No. 3 of the General Points distinguished three stages in the standardisation procedure, namely, in addition to preparation and validation, that of "homologation", i.e., the ascertainment, by an authority or by a body duly mandated by that authority, that a technical standard provides recognised technical regulations, the standard not being generally mandatory but having an effect of proof, which may have indirect legal consequences.

3. In current language, however, and particularly in the Geneva Agreement of 1958 on homologation (see No. 19 of the General Points) the term "homologation" is used in a different sense, namely, in the sense of an administrative procedure according to which the competent authorities declare, following an inspection, that a vehicle, item of equipment or parts conform to a particular regulation or a particular type. Consequently, the APTU Uniform Rules do not use this term.

4. Moreover, the opinions of the experts were divided with regard to the question of whether this stage of the validation of a technical standard should be regulated in the Uniform Rules or whether this question could possibly be regulated by means of the definition of the term "technical standard". The opinions of the experts differed with regard to the question of whether and, if applicable, to what extent a statement or a regulation concerning the *preparation* of technical standards and specifications was useful and necessary in the APTU Uniform Rules. On this subject, see also the remarks relating to Article 2 concerning the definition of the term "technical standard".

5. The Revision Committee had not judged it necessary to provide for, in addition to "preparation" and "validation", such "recognition" of a technical standard in the APTU Uniform Rules (Report on the 15th session, pp. 7-10; Report on the 18th session, p. 12).

   At its 24th session, the Revision Committee further developed the explanations on this (see the note under General Points at the end of paragraph 13); see also the additional parts of the Explanatory Report below.

6. Article 4 states that the *preparation* of technical standards and uniform technical prescriptions is not regulated by the APTU Uniform Rules.

As a result of the amendments adopted by the 24th session of the Revision Committee, which included a new version of Article 4, the above statement concerning UTP does not apply; see the additional parts of the Explanatory Report below.

7. The scope of application was defined fairly broadly, so as to include technical standards and uniform technical prescriptions not only for rail vehicles, their equipment and parts, but also for the infrastructure, the traffic safety and operational control systems and the railway material in general, insofar as these are intended to be used in international traffic (see the list of Technical Annexes in Article 8).

With regard to the above note in brackets, see the comments at the end of paragraph 10 under General Points.

Article 2
Definitions

1. Some of these definitions are already included in other Appendices, e.g. the CUI Uniform Rules and the CUV Uniform Rules ("railway infrastructure", "rail transport undertaking", railway infrastructure "manager"), while other definitions are included only in the APTU Uniform Rules ("railway material", "traction unit", "technical standard", etc.). In its 19th session, the Revision Committee decided to include all the definitions - when and insofar as necessary - in the respective Appendices and not in the basic Convention itself (Report on the 19th session, p. 17), since the definitions are not necessarily uniform, but may be worded differently according to the subject-matter of the respective Appendix.

At its 24th session, the Revision Committee adopted a comprehensive amendment to this Article; see the additional parts of the Explanatory Report below.

2. "Technical prescriptions" is, in fact, a general, generic term which also, strictly speaking, includes the "technical standards". However, the term "technical standards" is not understood or used in a uniform manner in current language. Consequently, the APTU Uniform Rules attempted to delimit these terms and designates as "technical prescriptions" only those prescriptions which are not "technical standards" in the strict sense of the definition of letter k). On the suggestion of the European Commission, the 5th General Assembly decided to incorporate into a "technical standard" the technical specifications prepared within the framework of the EC (Report, pp. 125-127). This is intended to avoid confusion with regard to the technical regulations adopted or validated by European institutions. Since the EC "technical specifications" are not always the result of a standardisation in the sense of letter k), it would however have been more logical to incorporate these specifications in the "uniform technical prescriptions".

At its 24th session, the Revision Committee decided accordingly, see the comments at the end of N°. 9 of the General Points.

3. The term "Contracting State" is used in this Appendix since the Member States of OTIF which have made a declaration in accordance with Article 42, § 1, first sentence, of COTIF, are not Contracting States in respect of the APTU Uniform Rules.

Article 3
Aim

1. This provision is intended to serve as a basis for the work of the Committee of Technical Experts. § 1 sets out the general objectives of the validation of technical standards and of the adoption of uniform technical prescriptions.

2. The 5th General Assembly decided to introduce a clarification according to which only those technical standards or uniform technical prescriptions which had been prepared at international level may be validated (§ 2) (Report, p. 134).

3. Moreover, the interoperability of the systems and components necessary for international traffic is to be assured as far as possible (§ 3, letter a). A formulation similar to that of § 3, letter b), according to which the technical standards and uniform technical prescriptions are performance related, is also found in Article 1, indent 1 of the Geneva Agreement of 1958 on homologation (see No. 19 of the General Points). The experts of the Revision Committee were in agreement on the principle that the standards and uniform technical prescriptions were to be performance related so that technical development is not hindered. This problem, however, cannot be regulated in a general manner. Rather, it is a question of examining, for each standard and each technical prescription, whether its content meets this criterion, this being from the preparation stage.

4. This "subject-matter article", however, does not have any legal effects with regard to the decisions duly taken by the Committee of Technical Experts. This means that decisions taken in proper and due form cannot be called into question again, in respect of their content, on the pretext that they do not correspond to Article 3.

Article 4 [17]

Preparation of technical standards and prescriptions

1. It is evident even from Article 1 that the APTU Uniform Rules *do not* regulate the *preparation* of standards or technical prescriptions, but only the *procedure* according to which the technical standards are validated and according to which the uniform technical prescriptions are adopted. Primarily, preparation remains the responsibility of the national or international standardisation agencies (e.g. CEN, CENELEC, ETSI, etc.) and of other competent institutions, particularly, the UIC, OSJD and UNIFE (§ 1).

2. Certain experts and delegates declared themselves to be in favour of introducing into

17 As a result of the amendments adopted by the 24th session of the Revision Committee, the explanations under this heading are mainly of historical significance; see the additional parts of the Explanatory Report below.

the text a provision regulating the question of competence in respect of the preparation of prescriptions and, in particular, technical standards, or even in favour of the granting of an express mandate to certain agencies. On the other hand, other experts, supported by the Central Office and, ultimately, by the majority of the Revision Committee, considered that such a provision was inopportune and unnecessary. A regulation concerning the right to make applications (see Articles 5 and 6) is sufficient to guarantee that the work of the agencies and institutions in question are capable of bringing about the validation or adoption of uniform technical prescriptions. Following these deliberations, the Revision Committee adopted a very general wording (Report on the 15th session, pp. 17-10; Report on the 18th session, p. 11/12). The 5th General Assembly adopted, without change, the text decided by the Revision Committee.

3. § 2 is intended to clarify that the conventional standardisation process remains unchanged in respect of industrial products and procedures.

4. The Revision Committee was of the opinion that this provision is declaratory in nature. Its importance lies in the fact that it expresses clearly the division of the work between, on the one hand, preparation, and on the other hand, validation or adoption (Report on the 18th session, p. 12).

Article 5
Validation of technical standards

1. This Article, in addition to Article 6, contains the essential provision of the APTU Uniform Rules.

2. The Central Office had raised the question of whether it was necessary to distinguish between, on the one hand, “technical standards” as a restricted term and, on the other hand, “uniform technical prescriptions” as a more general term. The Central Office was inclined to take as a basis the example of the Geneva Agreement of 1958 on homologation (see No. 19 of the General Points). It considered that it was sufficient to make provision only for a regulation concerning the “adoption of uniform technical prescriptions” without distinguishing between “technical standards” and “uniform technical prescriptions”. However, a more extensive wording of provisions was presented in the Central Office draft of 19 December 1997, so that the Revision Committee could better judge this question. The Revision Committee considered that a distinction was appropriate (Report on the 15th session, pp. 12-16; see also No. 13 of the General Points) and, consequently, adopted the definitions included in Article 2, letters k) and l), as well as the texts of Articles 5 and 6.

   At its 24th session, the Revision Committee decided in the German version to replace, in principle, “Verbindlicherklärung” with “Validierung” (both translated as validation in the English text), but included the provision in § 4 that technical standards or parts of them may be validated by provisions in UTP; see the additional parts of the Explanatory Report below.

3. § 1, letter d) refers in particular to the UIC, but does not exclude other railway organisations such as the OSJD, and other associations, such as UNIFE.

As the 24th session of the Revision Committee decided to restructure this Article, this comment now refers to § 2 d).

4. Each State which is party to the APTU Uniform Rules is free to decide the manner in which it transposes into national law the obligations of international public law resulting from the validation of a technical standard.

5. According to Article 20, § 3 of COTIF, the Committee of Technical Experts can only either validate technical standards or refuse to validate them, but it cannot amend these standards on the occasion of a validation. The reason for this is that, before being adopted as such, these technical standards have already been submitted to a certain procedure (see the definition given in Article 2, letter k), as well as No. 4 of the remarks relating to Article 20 COTIF).

6. In the interest of clarity, § 2 refers, with regard to the decision-making procedure within the Committee of Technical Experts and the entry into force of these decisions, to the relevant articles of COTIF.

As the 24th session of the Revision Committee decided to restructure this Article, this comment now refers to § 1.

Article 6
Adoption of uniform technical prescriptions

1. On this subject, see No. 8 of the General Points, No. 2 of the remarks relating to Article 2 and Nos. 2 and 6 of the remarks relating to Article 5.

2. In this case, likewise, each State which is Contracting State of the APTU Uniform Rules is free to decide the manner in which it transposes to national law the obligations of international public law resulting from the adoption of uniform technical prescriptions.

3. In keeping with the Central Office draft, Article 20, § 3 of COTIF, in the terms decided by the Revision Committee, did not provide, in respect of the technical prescriptions, and contrary to that which had been provided in respect of the standards, that the Committee of Technical Experts could only validate them without change or refuse to validate them. On the contrary, the Committee would be able to decide amendments, if necessary, before adopting a uniform technical prescription. This difference was explained by the fact that, in this case, the work of the Committee is not preceded by a procedure comparable to the standardisation procedure. The 5th General Assembly, however, decided not to treat technical standards and uniform technical prescriptions differently (Report, pp. 41-44 and Nos. 3 to 5 of the remarks relating to Article 20 COTIF).

Article 7
Form of applications

1. This is a regulatory provision intended to facilitate the appraisal of applications by the Committee of Technical Experts. Compliance with this provision is in the interest of the applicants.

2. At the 24th session of the Revision Committee, the provisions of this Article were extended and supplemented by a new Article 7a; see the additional parts of the Explanatory Report below.

Article 8 [18]
Technical Annexes

1. § 1 specifies the areas in which technical standards and uniform technical prescriptions can be devised. This provision thus creates the framework of the competence of the Committee of Technical Experts to validate technical standards and to adopt uniform technical prescriptions in a very wide variety of areas and to make these the essential basis for the technical admission of railway material (see ATMF Uniform Rules).

2. The 5th General Assembly decided to introduce an additional annex, namely, an annex concerning technical standards and uniform technical prescriptions concerning systems of information technology (Report, p. 135).

3. Although the Annexes provided for in § 1, letters a) to g) essentially cover all the necessary areas, the purpose of letter h) is to guarantee the necessary flexibility and to allow, if need be, the future introduction of an additional annex through the simplified procedure (Article 35 COTIF) (Report on the 15th session, pp. 25-27).

4. The preparation of the Technical Annexes according to Article 8 will involve a considerable work-load. The work relating to the Technical Annexes cannot be undertaken until after the 5th General Assembly although, according to § 2, first sentence, the Annexes constitute an integral part of Appendix F and thus of COTIF itself. For the text of these Annexes, a legal technical solution has been adopted similar to that chosen in the revision of the CIV and CIM Conventions in 1980 for Annex I of Appendix B to COTIF 1980 (RID) (see also Nos. 28-32 of the General Points, as well as Article 6, § 2 of the 1999 Protocol and Article 20 COTIF).

Article 9
Declarations

1. This does not relate to a declaration in the sense of Article 42, § 1, first sentence, of COTIF, concerning the APTU Uniform Rules in their entirety, but to reservations, in the sense of Article 42, § 1, second sentence, of COTIF, in respect of various Annexes of these Uniform Rules or in respect of certain provisions of these Annexes,

18 As a result of the amendments adopted by the 24th session of the Revision Committee, including the introduction of an Article 8 on deficiencies in UTP, the explanations on this Article are mainly of historical significance; see the additional parts of the Explanatory Report below.

i.e., concerning certain validated technical standards or certain adopted uniform technical prescriptions.

2. In view of the differences that exist with regard to technical equipment in the Member States of OTIF, the possibility of such declarations is of practical interest, although it goes against the objectives mentioned in Article 3. Even a harmonisation which does not extend to all of these areas in all of the States which are party to the Convention can result in an improvement of the current situation with regard to interoperability.

3. The declarations in accordance with Article 9 can be withdrawn at any time.

4. See also the additional parts of the Explanatory Report below.

Article 10
Abrogation of Technical Unity

1. As mentioned in Nos. 10 and 26 of the General Points, the existing technical standards and uniform technical prescriptions, particularly the provisions of the UT, are to be included in the Annexes of the APTU Uniform Rules.

2. The managing administration of the UT, the Swiss Government (Federal Transport Office) has been involved in the work relating to the APTU Uniform Rules and has approved this approach in principle (see Federal Transport Office letter of 24.4.1997 addressed to the States which are party to the UT).

3. The UT is a convention under international public law which is still in force and mandatory for the States which are party to it. Even if its importance is no longer comparable to that which it had at the time of its adoption and at the time of the subsequent amendments/supplements - the last version dates from 1938 - this Convention under international public law has never been abolished or annulled. Some of its content has been included in other agreements, in particular, in the RIC and RIV which, however, as agreements between the rail administrations/companies, do not have the same legal status and do not bind the States which are party to the UT, but only the participating railways.

4. The following States were party to the UT at the time of the last formal amendment in force (1938 version, entry into force 1.1.1939): Belgium, Bulgaria, Czechoslovakia, Denmark, France, the German Reich, Greece, Hungary, Italy, Luxembourg, The Netherlands, Norway, Poland, Romania, Sweden, Switzerland, Turkey, Yugoslavia.

5. The 1938 version of the UT was also intended to be mandatory, from the point of view of international public law, for the successor states of the German Reich, Czechoslovakia and Yugoslavia, in accordance with the Vienna Convention of 1969 on treaty law. According to this convention, the 1938 version of the UT is also in force in Austria, Croatia, the Czech Republic, the Federal Republic of Yugoslavia, Germany, Macedonia, the Republic of Bosnia and Herzegovina, the Slovak Republic and Slovenia.

6. Consequently, 22 of the 39 member States of OTIF are also States which are party to the 1938 version of the UT. The Federal Republic of Yugoslavia, as one of the successor States of the former Yugoslavia, is the only State which is party to the 1938 version of the UT but is not a Member State of OTIF.

7. Within the framework of the broadened objective of OTIF (see Article 2, § 1, letters c) and d) COTIF), it is planned to group together in the Annexes of the APTU Uniform Rules (and to develop on this basis) all the technical standards and uniform technical prescriptions which are of significance to international rail traffic.

8. The specifications of the UT are to be incorporated into the Technical Annexes of the APTU Uniform Rules so that, when the new COTIF, its Appendices and related Annexes come into force, the UT can be abrogated between the States which are party to it and the States which are party to the APTU Uniform Rules.

9. Since it is not guaranteed that all the States which are party to the UT will also be States which are party to the APTU Uniform Rules, and it is thus not guaranteed that these States might not make a declaration in accordance with article 42, § 1, first sentence, of COTIF, it will not be possible to abrogate the UT in all the States upon the entry into force of the Annexes of the APTU Uniform Rules (decision of the Committee of Technical Experts in accordance with Article 8, § 3 APTU), all the more so since it is not known whether the Federal Republic of Yugoslavia, as a State which is party to the UT, will at that time again be a member of OTIF and also a State which is party to the APTU Uniform Rules.

10. The Convention on the UT does not itself include any institutional provisions, e.g., with regard to amendments, entry into force or abrogation. According to the Vienna Convention of 1969 on treaty law, abrogation of the UT, or a regulation on primacy, can be introduced into a new convention. The 1999 Protocol and its Annex, COTIF in its new version with its Appendices, is such a new convention. A special act of international public law outside or in addition to the 1999 Protocol and the APTU Uniform Rules is therefore unnecessary.

11. Article 10 provides that, upon entry into force of the Annexes, decided by the Committee of Technical Experts in accordance with Article 8, § 3, *in all the states which are party to* the UT, the provisions of the UT are abrogated.

12. See also the additional parts of the Explanatory Report below.

Article 11
Precedence of the Annexes

1. § 1 regulates the case in which not all the States which are party to the UT become Contracting States of the APTU Uniform Rules. Following the entry into force of the Annexes adopted by the Committee of Technical Experts in accordance with Article 8, § 3, the provisions of these Annexes take precedence in relations between the Contracting States of the APTU Uniform Rules over the provisions of the UT.

2. As mentioned in No. 26 of the General Points, it is planned to include in the Annexes of the APTU Uniform Rules, in accordance with Article 8, as far as is possible and following rewording, not only the UT, but also the corresponding provisions of the RIV and RIC Regulations and the UIC technical leaflets, which are mandatory for the railways. Due to the different legal basis - the UT is an agreement of international public law, whereas the RIV and RIC are agreements between the railways - no direct provision can be made by the APTU Uniform Rules for partial abrogation of RIV and RIC. Consequently, § 2 stipulates only the precedence of the Technical Annexes of the APTU Uniform Rules over RIV and RIC.

3. As a result of the fundamental decisions taken by the Revision Committee, it was necessary to include two further Articles and one new Annex. At the same time, the Annexes added previously were dispensed with; see the additional parts of the Explanatory Report below.

Additions to the Explanatory Report

based on the decisions of the 24th session of the Revision Committee (Berne, 23-25.6.2009) and the 9th General Assembly (Berne, 9/10.9.2009)

NOTE: The general remarks and the remarks on individual provisions in this Explanatory Report contain a summary of the information in relation to the following points:

a) Background to and justification for the amendments that were submitted to the Revision Committee and adopted by it, and

b) Discussion on the provisions for the amendment of which the General Assembly is responsible in accordance with Article 33 § 2 and § 4 letter (f) of the Convention, including editorial amendments.

The information mentioned in

a) has been examined and approved by the Revision Committee, together with the approved amendments and the General Assembly has noted them;

b) has been examined and approved by the General Assembly following the Revision Committee's considerations and recommendations in this respect.

General Remarks

1. The General Assembly's decisions at its 7th and 8th sessions to support initiatives to resolve the legal and practical problems between the law of the European Union (EU) and COTIF 1999 envisaged that the open questions with regard to Appendices F and G to COTIF 1999 should be discussed at technical level in conjunction with their implementation in order to find practical solutions. This might lead to meetings between the Secretary General and the European Commission and/or to the setting up of appropriate working groups.

2. A revision group set up in 2004, the so-called "Schweinsberg Group", looked at realising these decisions and considered further significant developments in relevant provisions within the EU that had taken place since the Vilnius Protocol was adopted, notably the drafting of harmonised technical specifications for interoperability and acceptance procedures (Directives 96/48/EC, 2001/16/EC, 2004/49/EC and 2004/50/EC). All the Member States of OTIF, the European Commission and the sectoral organisations were invited to take part in this group. The objective the group set itself was to ensure compatibility between the rules of COTIF and EU legislation, particularly the "interoperability directives", by reviewing and revising the APTU and ATMF Appendices in accordance with the following principles:

a) The Member States of OTIF that are also members of the EU or the EEA are entitled to perform transport taking place exclusively between their territories exclusively in accordance with EU legislation;

b) Railway vehicles and other railway material from EU/EEA Member States may be approved for international traffic in Member States of OTIF that are

not members of the EU or the EEA on the basis of the certifications and approvals issued in accordance with EU legislation;

c) Railway vehicles and other railway material from Member States of OTIF that are not members of the EU or the EEA may be approved for international traffic in EU/EEA Member States on the basis of the certifications and approvals issued in accordance with the COTIF 1999 system.

3. It was agreed that the Technical Specifications for Interoperability (TSI), as envisaged by the EU interoperability legislation, would be used as the COTIF 1999 "standard level" thereby ensuring full compatibility and that a "variant" would form a range of provisions contained in an APTU Annex that would give a group of non EU/EEA Member States the opportunity of applying a specification meeting a RAMS level (Reliability, Availability, Maintenance, Safety) other than that of a TSI.

4. The outcome of the first phase of the revision group's meetings (2004-2006) was a proposal to amend the APTU and ATMF Appendices in such a way that

a) it is sufficient for the EU/EEA Member States of OTIF to approve operations between the EU/EEA Member States exclusively on the basis of EU legislation;

b) it is sufficient for railway vehicles and other railway material from EU/EEA Member States to have certifications and approvals issued in accordance with EU legislation and assessments according to national requirements for the relevant network (compatibility) in order to be approved for international traffic in non EU/EEA Member States of OTIF;

c) railway vehicles and other railway material from non EU Member States of OTIF which

- are approved for traffic ("admitted to operation") on the basis of the COTIF 1999 "standard level" (identical to the TSI), shall also be approved for traffic or use in the EU Member States on the basis of the certifications and approvals issued in accordance with the COTIF 1999 system and assessments according to national requirements for the relevant network, or if these

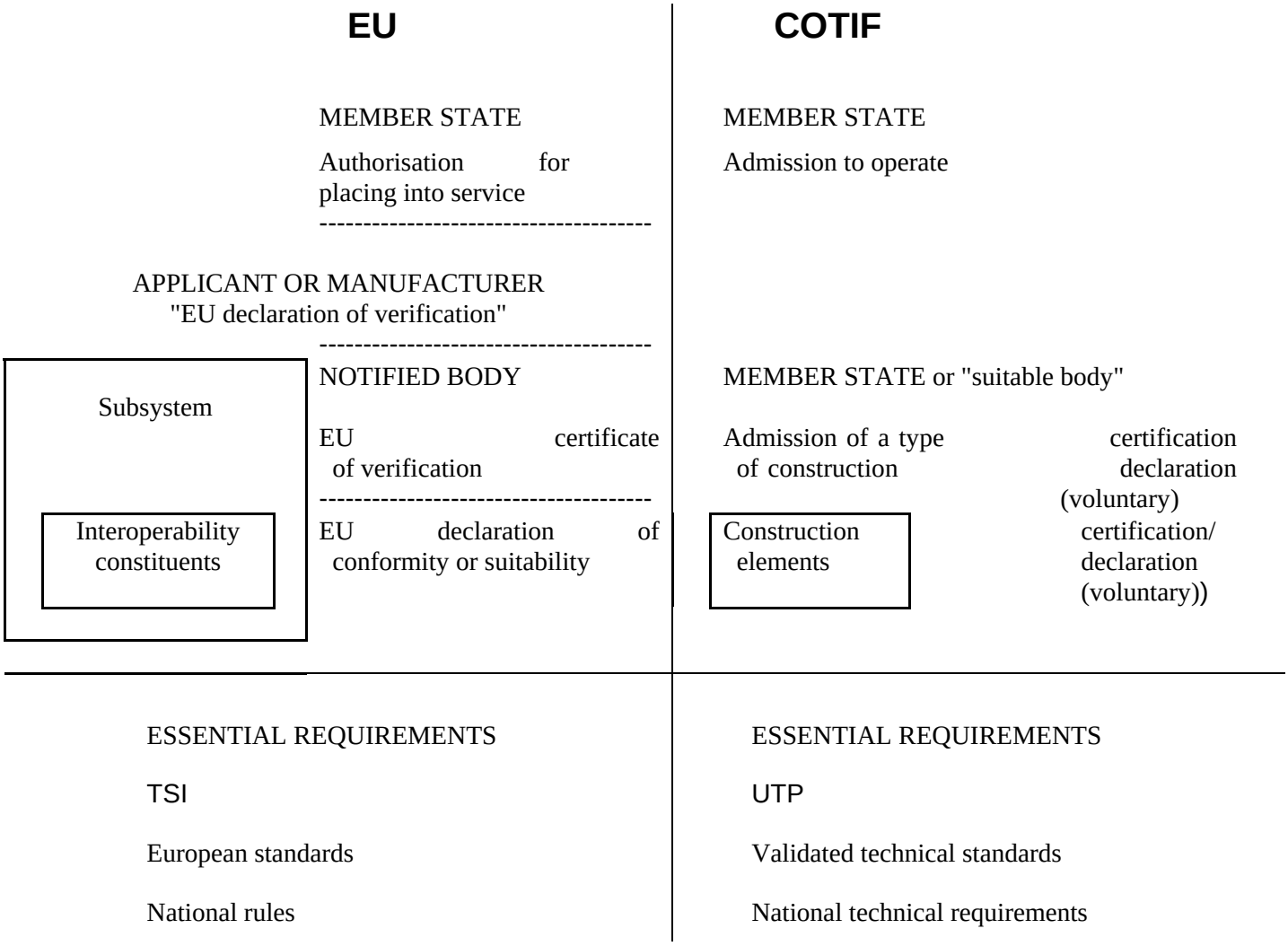
- are approved for traffic ("admitted to operation") on the basis of a COTIF "variation" (see below), they shall also be approved for traffic or use in the EU Member States on the basis of the certifications and approvals issued in accordance with the COTIF 1999 system and the assessments according to national requirements for the relevant network, provided certain requirements of the standard level, particularly with regard to safety, are met.

5. The proposal included

   a) a range of amendments to APTU aimed particularly at aligning the APTU Annexes with the existing and planned TSI, creating the opportunity of including special cases and variations and of including new rules to clarify the relationship between the existing national technical requirements and the APTU Annexes, and

   b) a range of amendments to ATMF aimed at ensuring equivalence between the various stages of the approval process in the EU interoperability directive and COTIF 1999 and thereby making cross-acceptance of the assessment authorisations and admissions/approvals possible.

6. If one compares the procedure prescribed by EU legislation and the procedure of the correspondingly amended ATMF, the various elements correlate as follows:


EU
COTIF
MEMBER STATE
Authorisation for placing into service
APPLICANT OR MANUFACTURER
"EU declaration of verification"
Subsystem
NOTIFIED BODY
EU certificate of verification
Interoperability constituents
EU declaration of conformity or suitability
MEMBER STATE
Admission to operate
MEMBER STATE or "suitable body"
Admission of a type of construction
certification declaration (voluntary)
Construction elements
certification/ declaration (voluntary))
ESSENTIAL REQUIREMENTS
TSI
European standards
National rules
ESSENTIAL REQUIREMENTS
UTP
Validated technical standards
National technical requirements

7. The fact that these documents are mutually recognised constitutes an important provision in the revised Appendices. Verification is carried out in accordance with the same technical provisions (provided the APTU Annex corresponds to the relevant TSI) and is carried out by organs that have been nominated with correspondingly clear responsibilities and criteria concerning their qualifications and independence.

8. One of the main prerequisites was that it had to be possible for the OTIF Revision Committee to adopt the requested amendments to the Appendices. Thus amendments could not concern those Articles which, according to the Convention, may only be amended by OTIF's General Assembly and which must subsequently be ratified – in other words, it was necessary to avoid a further delay of several years before the amendments were ratified and could enter into force.

9. The revised draft versions of the APTU and ATMF Appendices were brought to the attention of the Committee of Technical Experts (CTE) at its first session in July 2006, but at that time, the Revision Committee could not yet subsequently be tasked with looking at the drafts as the EU asked for more time to review the drafts. At the second session of the CTE in June 2007, the EU Member States submitted a common Community position with a number of substantial comments, principally that the APTU and ATMF Appendices needed further revision in order to simplify them (the concept of variations overlapped with other possibilities, such as specific cases and exemptions) and in order to take account of the EU's new plans to amend its regulations, e.g. those relating to mutual recognition and to include entities in charge of vehicle maintenance.

10. In addition to the technical working group, WG TECH, which began its work after the first session of the CTE, the second session of the CTE set up another working group, WG LEGAL, to discuss the legal aspects of the amendments to the technical Appendices F and G.

11. WG LEGAL started its work by discussing a proposal from the Secretariat concerning a new Article 3a of ATMF and the further connection between the interoperability directives and the APTU and ATMF Appendices. The aim of Article 3a of ATMF was to include in this Article the specific law for the EU/EEA Member States to apply Union law to vehicles which are only used in transport between the EU/EEA Member States. With regard to the format of the APTU Annexes, WG LEGAL came to the conclusion that a simple reference to the TSI would not be acceptable and instead adopted the Secretariat's proposal for a two-column format; identical/equivalent provisions would be shown across the whole width of the page (both columns), whilst provisions specific to COTIF 1999 would be shown in the left-hand column and the corresponding EU provisions (TSI and/or others) would be shown in the right-hand column, but only for information. This way, both sets of provisions could be shown in the same document.

12. With regard to the further revision of the APTU and ATMF Appendices, it was concluded that the Schweinsberg Group should be reactivated and given the task of looking at whether further amendments to Appendices F and G that would result from the outcome of developments in the EU provisions were necessary.

The Group was to be asked to draft the necessary amendments by revising the versions that were produced between 2004 and 2006.

13. The main aim was to align both Appendices with the principles of the new version of the interoperability directive (Directive 2008/57/EC). Once it had started its work, the Group also dealt with the soon to be adopted revision of the Safety Directive (2008/110/EC), to the extent that vehicle maintenance was concerned.

14. In June 2008, it was decided to relinquish the "variants" included in the proposals from the period 2004-2006 and to replace them with the possibility of achieving the same aim by including specific cases (extended and common to more than one State) or alternative target systems included in the APTU UTP and by considering exemptions. In addition to technical reasons, economic reasons are also accepted as justification for a Member State's application to apply such a solution.

15. At the 3rd session of the CTE (11/12 February 2009), the proposals to amend the APTU and ATMF Appendices were discussed again and it was agreed that these should now be submitted to the Revision Committee for adoption. When submitting them, the Secretariat should take into account three suggestions on details that were raised at the meeting and to ensure correct terminology and consistency.

16. On the part of the European Commission, it was explained that from the technical point of view, there were no objections to the texts of the amendments to the APTU and ATMF Appendices. On legal aspects, comments were subsequently provided by the legal service, and these have been taken into account in the explanations on the relevant provisions.

17. When the Explanatory Report refers to EU Member States, it also applies *mutatis mutandis* to States where the Community legislation applies as a result of international agreements with the European Community.

18. The Revision Committee (24th session, Berne, 23-25.6.2009) followed to a large extent the suggestions made by the Schweinsberg Group as endorsed by the CTE. Article 4 § 2 was amended in order to avoid misunderstandings concerning the procedure to be followed according to Article 6 and the relevant provisions of the Convention. Furthermore the impact of newly adopted UTP on existing subsystems was clarified by inserting a new § 2a in Article 8. Section 1 of the Annex was replaced by a newer version. The Revision Committee also agreed on additional text to be included in the Explanatory Report in particular on Articles 9 to 11 (for details see the relevant particular remarks).

19. The 9th General Assembly (Berne, 9/10.9.2009) noted the results of the 24th session of the Revision Committee concerning the amendments to Appendix F (APTU) of the Convention and the Explanatory Report and approved the editorial amendments and the Explanatory Report on Articles 1, 3 and 9 to 11 of APTU. It noted that these amendments are not decisions to which Article 34 of the Convention applies and instructed the Secretary General with regard to bringing these amendments into force to proceed in accordance with Article 35 of COTIF.

It also authorised the Secretary General to summarise its decisions on the results of the Revision Committee in the general part of the Explanatory Report.

In particular

Articles marked with * may not be changed by the Revision Committee, only by the General Assembly.

Article 1 *
Scope

According to Article 33 § 2 and § 4 letter (f) of the Convention, only the General Assembly could decide on an amendment to this Article, not the Revision Committee. The Article lays down the general scope. The specific rules on the cases in which provisions adopted according to the procedures under APTU for the use of railway material in international transport are applicable, particularly when this concerns States in which EU law applies, are dealt with in the amended ATMF. Where particular matters are not covered by APTU and ATMF or by the provisions that are based on them, it is generally EU law on approvals ("admissions"), interoperability and safety that applies in the case of the States referred to.

Article 2
Definitions

In order to avoid expanding the texts unnecessarily, it was decided only to include in Article 2 of ATMF terms that are used in both Appendices. This Article in APTU therefore contains a reference to the definitions in ATMF as well as definitions of those terms that are only used in APTU. In the English version, the terms are arranged alphabetically. The other language versions follow the sequence of the English version.

Article 3 *
Aim

According to Article 33 § 2 and § 4 letter (f) of the Convention, only the General Assembly could decide on an amendment to this Article, not the Revision Committee. The term "variants" used in § 3 should be understood not as a *terminus technicus*, but as an overarching term for corresponding terms taken from the TSI, such as the terms "alternative target system", "specific case" and "open point".

Article 4
Preparation of technical standards and UTP

1. This Article clarifies responsibilities of:

   a) standardisation bodies for technical standards concerning railway material and for the standardisation of industrial products and procedures (§ 1) and

   b) the CTE for the UTP, which corresponds to Articles 20 and 33 § 6 of the Convention, with specific support from working groups and the Secretary General.

2. § 2 shall not prevent the Secretary General from supporting applicants according to Article 6 § 2.

Article 5
Validation of technical standards

1. In § 1, which corresponds to § 2 in the 1999 version of APTU, reference is made to the provisions of the Convention that are significant for the decision on validation. The validation of a standard means that the CTE ascertains that the provisions of this standard or of more precisely defined parts of it can be used as a viable solution for indication of the fulfilment of legal requirements. Application of validated standards is voluntary. In addition however, such validated standards or validated parts of standards can be made into binding requirements by means of a provision in the UTP.

2. § 2 corresponds to § 1 in the 1999 version of APTU.

3. §§ 3 and 4 are new. In § 3, the Secretary General is required to publish references to validated technical standards on OTIF's website; the voluntary application in accordance with § 4 of a technical standard published thus has legal consequences. The voluntary application of a validated standard does not preclude the assessing entity from checking the correct use of it and the compliance with the regulations.

Article 6
Adoption of UTP

In § 1, which corresponds substantially to § 2 of the 1999 version of APTU, reference is made to the provisions of the Convention that are significant for the decision on the adoption of a UTP. Text was added to this paragraph, and to § 2, which otherwise corresponds to § 1 of the 1999 version of APTU, to the effect that the decision may also affect amendments to an adopted UTP.

Article 7
Form of applications

This Article has been extended. It was made clear that the application

– is indeed to be sent to the Secretary General, although it is intended for the CTE,

– must also contain an assessment of the social and economic consequences and of the effects on the environment, and

– may, for certain reasons, be refused by the CTE.

Article 7a
Assessment of consequences

1. This Article is new.

2. The consequences for all

   - Contracting States,

- transport undertakings,
- other actors in relevant areas of activity and
- other UTP, where there are interfaces with them

must be assessed.

3. According to § 3 the entities concerned must provide data free of charge.

Article 8
UTPs

1. The title was amended because the annexes listed in the 1999 version of APTU have been replaced with the UTP, which correspond to the TSI and which, according to §§ 1 and 3, must be published on OTIF's website. The UTP have to be published with their date of entry into force. The website will show an updated list of the UTP, with information on which Contracting States apply them.

2. The wording of the Article was also completely revised along the lines of the principles for TSI.

3. § 2a has been included in order to clarify the impact of a newly adopted UTP on existing subsystems, concerning e.g. an existing wagon, locomotive, passenger coach or piece of infrastructure.

4. § 9 contains the basis for the two-column layout. The texts of the UTP that have the same wording as the TSI are written across the whole width of the page, the texts of the UTP that differ from the TSI are written in the left-hand column and the corresponding text of the TSI is shown in the right-hand column for information

Article 8a
Deficiencies in UTP

1. This is a new Article.

2. § 1 deals with the approach the CTE must take if it discovers that a UTP that has already been adopted contains errors or other deficiencies, particularly if the source of the discovery is those who are obliged to notify the Secretary General in accordance with § 2. From the main example given (contradiction with or insufficient provisions concerning the essential requirements) and any measures to be taken (amendment to the UTP and transitional solution), it ensues that the only deficiencies concerned are those for which an impact on the material content of the provision cannot be ruled out *a priori*.

Article 9 *
Declarations

1. According to Article 33 § 2 and § 4 letter (f) of the Convention, only the General Assembly could decide on an amendment to this Article, not the Revision Committee.

2. § 1 states that declarations of non-application may be made not only against an adopted UTP but also against a validated technical standard. According to Article 5 § 4 the application of validated technical standards is in principle voluntary but a standard or a part of it may be made obligatory through provisions in a UTP. §1 is in this regard therefore to be understood as offering the possibility to make a declaration of non-application against a validated technical standard or part of it which has been made obligatory through provisions in a UTP.

Article 10 *
Abrogation of Technical Unity

1. According to Article 33 § 2 and § 4 letter (f) of the Convention, only the General Assembly could decide on an amendment to this Article, not the Revision Committee.

2. In this Article which has been editorially adapted as consequence of changes in other Articles [19] it is stated that the entry into force of the UTP, adopted by the CTE in accordance with Article 6 § 1, in all the States parties [20] to the 1938 version of the International Convention on the Technical Unity of Railways (Technical Unity 1938), shall abrogate that convention. However it does not seem that the wording of this provision gives an exact answer to the question if and when the abrogation of that Convention would take effect. It has been assumed that this would be the case when all relevant UTP and validated standards covering the provisions of the Technical Unity 1938 are in force. But it is unlikely that a common interpretation among the Member States of OTIF and the States parties to the Technical Unit 1938 can easily be achieved. Taking account in particular of States where the abrogation of the Technical Unity 1938 would concern their national legislation any interpretation on the validity of the Technical Unity 1938 or of parts of it needs to remain the prerogative of its States parties.

19 see b) of the NOTE under the heading “Explanatory Report”

20 Belgium, Bulgaria, Czechoslovakia, Denmark, France, Germany, Greece, Hungary, Italy, Luxembourg, Netherlands, Norway, Poland, Romania, Sweden, Switzerland, Turkey, Yugoslavia.

Article 11 *
Precedence of the UTP

1. According to Article 33 § 2 and § 4 letter (f) of the Convention, only the General Assembly could decide on an amendment to these Articles, not the Revision Committee.

2. This Article which has been editorially adapted as consequence of changes in other Articles [21] contains rules of precedence over the provisions of the Technical Unity 1938 as well as of RIC and RIV. As to the provisions of the Technical Unity 1938, see remarks to Article 10.

3. § 2 which refers to RIC and RIV as applicable before 2000 is to be understood as that the APTU and UTP shall also take precedence over agreements replacing RIC and RIV; e.g. as of 01.07.2006 parts of RIV has been replaced by the General Contract of Use (GCU).

Article 12
National technical requirements

1. This is a new Article.

2. When the new version of the APTU Appendix adopted in 2009 enters into force, the Contracting States shall ensure that the Secretary General is informed of all their applicable national technical requirements. In order to avoid that EU Member States would have to notify the same rule twice (once to the European Commission, once to the Secretary General), the European Commission will make sure that the Secretary General has access to the data base being set up by DG TREN and the European Railway Agency (ERA). In that case, for the Contracting States which are also members of the European Community, the data base shall at the deadline indicated in § 1 second sentence contain the information on the National technical requirements as required by this article and the presence or non-presence in the EU data base is considered to be legal proof in relation to this Article. National technical requirements that are covered by a UTP that has entered into force expire automatically, unless the Secretary General receives notification beforehand, with justification, of the need to maintain the national requirements in question.

3. In § 1 the term “analogous” means that the requirement concerns the same objective, not necessarily prescribes the same solution, e.g. the visibility of a vehicle.

Article 13
Equivalence table

1. This is a new Article.

2. The equivalence table provides a new way of compiling cross-references between national requirements, UTP and TSI and ultimately of making easier the cross accep-

21 see b) of the NOTE under the heading “Explanatory Report”

tance of vehicles built and approved according to different standards. The CTE can take decisions on equivalence between

- national technical requirements of various Contracting States,
- UTP and TSI and
- UTP and national requirements.

3. Equivalence must be indicated in the published reference (equivalence) document.

ANNEX

Parameters to be checked in conjunction with the technical admission of non-UTP conform vehicles and classification of the national technical requirements

This Annex corresponds to Annex VII of Directive 2008/57/EC as amended by Directive 2009/131/EC. Group A is expanded to include national rules equivalent to provisions in UTP (as in Article 13).

Uniform Rules concerning the Technical Admission of Railway Material used in International Traffic (ATMF)

Explanatory Report [22]

General Points

Preliminary remark: the explanatory report which follows applies analogously to railway material other than rail vehicles which are intended for use in international traffic.

1. The judicial systems of almost all the Member States of the Intergovernmental Organisation for International Carriage by Rail (OTIF) provide that, in order to be operated or used in public traffic, means of transport (motor vehicles, railway vehicles, river boats, ships of the high seas and aircraft) must conform to certain specifications concerning construction and operation. Approval for public traffic is generally effected by means of an administrative document in the form of an approval of a model or a type of vehicle (prototype), followed by an admission to traffic of the individual vehicle, the latter being effected in a simplified manner, to the extent that the individual vehicle, according to the information supplied by the manufacturer, corresponds to the type or model already approved.

2. The purpose of these procedures, which are based on national and international law, is primarily traffic safety. In the majority of the Member States of OTIF, technical admission of vehicles for traffic is a sovereign task (state or at least public) which is partially entrusted to private companies (e.g., manufacturers). The procedure involves the manufacturers and the competent authority in the case of a model or type approval (admission of a type of construction). On the other hand, the admission procedure involves the person using the vehicle, or the keeper, and the competent authority in the case of admission of an individual vehicle for traffic (admission to operation). Technical admission is documented in certificates issued by the competent authorities. Frequently, the authorities with responsibility for admission also act as technical supervision authorities, with responsibility for periodic inspections of the safety of vehicles required by law, either by conducting these inspections or supervising them. This task is entrusted in part to private agencies (e.g., approved inspection centres).

3. The situation is essentially the same with regard to the technical admission of railway vehicles. Unlike the system in respect of the technical admission of other vehicles, in the majority of the Member States of OTIF, the agency responsible for the admission of railway vehicles is the same as the company which uses the vehicle: in this case, the railway. The reason for this lies in the fact that, to a large extent, the railways and the State constituted, or still constitute, a single entity (railways as a part of the state administration, incorporated in the State in the form of a public undertaking, patrimony or other form). For this, technical admission of railway vehicles is still performed, as in the past, by the railways themselves, in their capacity as

22 The articles, paragraphs, etc. which are not specifically designated are those of the ATMF Uniform Rules; unless otherwise evident from the context, the references to the reports on sessions not specifically identified relate to the sessions of the Revision Committee.

state agencies. In addition, the development of technical specifications for the construction and operation of railway vehicles, serving as a basis for technical admission, has been and still is largely entrusted to the railways and their international associations. At international level, this has resulted in the Regulations on the Reciprocal Use of Wagons (RIV) and of Carriages and Vans (RIC) in International Traffic, agreed between the railways, as well as the technical leaflets of the International Union of Railways (UIC).

4. For the majority of the Member States of OTIF, this special legal situation in the rail sector cannot be maintained indefinitely. Today, this is true for the 15 Member States of the European Community (EC), as well as for Liechtenstein and Norway, which are States which are party to the Agreement on the European Economic Area (EEA) and, in the medium term, will be true for States which have lodged an application for accession to the EC (Turkey, Hungary, Poland, Romania, the Slovak Republic, Estonia, Latvia, Lithuania, Bulgaria, the Czech Republic, Slovenia), starting from the date of their accession.

5. On the basis of the Directive 91/440/EEC, Union law prescribes for the members of the EC and of the EEA an independent management of the rail transport undertakings, and hence a separation, in terms of organisation and law, of the State from the rail transport undertaking. The Directive also authorises a separation, in terms of law and organisation, of rail transport from infrastructure management, but without imposing the legal form (private or public status). In the majority of the Member States of the EC, as well as in some States wishing to accede to the EC, management of the rail transport undertakings is already independent of the State.

6. Added to these fundamental changes, in the States of the EC and the EEA, is the opening of the rail networks to other rail transport undertakings (Article 10 of the Directive 91/440/EEC and the European Commission proposal of 19 July 1995 seeking to amend that directive). This proposed amendment provides for a complete opening of the rail networks to use by other rail transport undertakings. The idea of “rail freight corridors” is also bringing about fundamental changes.

7. This legal system, which is already mandatory or will be in the future (following accession to the EC) in the majority of the Member States of OTIF, is not comparable with the system, still widely practised, of technical admission and inspection of railway vehicles by the railways themselves or by the rail transport undertakings themselves. The possibility of the use of the public railway infrastructure(private sidings are not included) and the right to its use by all rail transport undertakings having their registered office in the States of the EC and the EEA or by the owners of private wagons, as well as the idea of a free use of railway vehicles in international traffic, necessarily result in a different assessment of the system of auto-approval and auto-inspection of own vehicles, as well as of the system of admission and inspection of vehicles of other undertakings by the (state) railways). For reasons of legal principles, particularly reasons to do with the law on competition, it does not appear to be correct in terms of policy to allow that a rail transport undertaking, in competition with other rail transport undertakings, whether having its own infrastructure or not, should decide on the technical admission for traffic or the admission criteria for vehicles of a competing undertaking (rail transport undertaking or owner of private

wagons). Moreover, such a decision could only relate to admission for traffic on the infrastructure of the undertaking in question.

8. Consequently, it proves to be necessary to regulate in a uniform and mandatory manner, at international level, the principles of a new system of technical admission of railway vehicles for international traffic as well as the technical specifications for the construction and operation of vehicles, serving as a basis for admission. Although the UIC technical leaflets are mandatory for the members of that association, they do not have the same legal status as judicial standards drawn up at state level. The ATMF Uniform Rules, examined by the Revision Committee (15th, 18th, 22nd and 23rd sessions, 2 - 6.3.1998, 25 - 28.5.1998, 1 - 4.2.1999 and 23.3.1999) and adopted by the 5th General Assembly, are the reasonable and politically logical response to the legal development that has occurred within the EC, the EEA and, to some extent, in other States. Since international rail traffic does not concern only the States of the EC and the EEA, but a further 22 States joined together within OTIF, it should be subject to common rules, and not just with regard to transport law (CIV/CIM Uniform Rules). Consequently, it was logical to regulate the "technical" complex within the framework of OTIF/COTIF, insofar as this is of importance for international traffic.

9. The ATMF Uniform Rules (Appendix G to the Convention) set out the principles, objectives and procedures of technical admission of railway vehicles. The uniform technical specifications concerning the construction and operation of vehicles and of infrastructure, contained in the Annexes of the APTU Uniform Rules (Appendix F to the Convention), will constitute the basis of technical admission. Compliance with these specifications is necessary to render possible competitive international rail traffic without being compelled to change traction vehicles, pass through gauge or axle changing installations, transfer or change train at changeover points from one network to another.

10. The Annexes provided by the APTU Uniform Rules could constitute the precursor of a set of uniform, international regulations for the construction and operation of railway material, the over-riding objective of which is to achieve maximum interoperability - beyond the geographical area of the EC and the EEA - at least in the areas in which standardisation of the technical specifications concerning construction and operation is not justified for financial reasons (e.g., due to differences in gauge, rail gauge template, electric power supply systems and train safety systems).

11. The concept of the ATMF Uniform Rules and the APTU Uniform Rules and their Annexes can also be developed with a view to future tasks of OTIF. It would be conceivable, in the medium term, to make OTIF, or the current Central Office, an authority responsible for admission and technical inspection in international rail traffic matters. The enlargement of OTIF's functions would have to be accompanied by a reduction of powers at national level and with a substantial reduction of the functions of the national institutions currently responsible for technical admission. In this area, civil aviation again serves as an example, with the creation, in 1990, of the Joint Aviation Authorities (JAA) in Paris. In the field of aviation, the JAA can be considered as the precursors of a European technical supervisory authority. Intergovernmental co-operation in matters of rail technical su-

pervision could follow this example. In this context, reference is made to Articles 3 and 4 of the Convention.

12. In the Member States of OTIF, there are several different gauges:

- 1688 mm wide gauge in Spain and Portugal
- 1600 mm wide gauge in Ireland
- 1524 mm wide gauge in Finland
- 1520 mm wide gauge in Lithuania, as well as in a section in the south of Poland and on a section in Romania
- 1000 mm narrow gauge and other gauges in Tunisia, as well as in some parts of Spain, in Portugal, Algeria, France (Corsica), Italy (Sardinia), Greece (Peloponnese) and Switzerland
- 1435 mm standard gauge in the other Member States, apart from some small regional networks

This situation alone prevents mandatory uniform technical specifications for technical admission of vehicles and any other railway material from being established for *all* the Member States of OTIF. For this reason, the scope of application of the new Appendices F and G will probably remain initially, to a large extent, limited to the Member States of OTIF whose railway network is of the standard gauge.

13. The same could apply with regard to uniform technical prescriptions concerning the track gauge template, the electric power supply systems and the safety systems. With regard to the electric power supply systems, the following systems are operated:

- 3000 V DC (direct current) in Spain, Italy, Slovenia, Croatia, some parts of the Czech Republic and the Slovak Republic, in Poland and in Belgium
- 1500 V DC, and lower voltage, in the south of France, in the Netherlands, and in the south-east of England
- 25 kV / 50 Hz AC (alternating current) in Portugal, Spain (Madrid-Seville high-speed line), Sardinia, Macedonia, the Federal Republic of Yugoslavia, Bosnia and Herzegovina, Hungary, some parts of the Czech Republic and the Slovak Republic, in Finland, Denmark, the United Kingdom (with the exception of the south-east of England), Ireland, Luxembourg, as well as in the north and east of France and on the Paris-Lyon-Provence high-speed line
- 15 kV / 16 2/3 Hz AC in Switzerland, Liechtenstein, Austria, Sweden, Norway and Germany

With regard to the train safety systems, the following systems are operated: ATC, ATS, ZUB, AWS, ATB, Krokodil, TLB, TWM 430, Indusi, LZB, KGB, TVM 300, TVM 430, Signum 121, BACC 50 Hz / 100 Hz and ASFA.

14. The ATMF Uniform Rules essentially contain a uniform regulation for the procedure for the technical admission, by the authorities of the Member States, of railway material intended for use in international traffic. A consequence of this uniform procedure is that technical admission granted in a Member State is recognised in another Member State of OTIF without the need for a repeat procedure in these States. A "competitive situation" with the EU is excluded insofar as the powers of the Member States of the EU to establish procedural prescriptions and to follow administrative procedures bases on these prescriptions remain uncontested. With regard to relations between OTIF and the EU, see also Nos.12 to 20 of the General Points of the Explanatory Report on the APTU Uniform Rules, as well as Article 38 of COTIF and the explanations relating to the latter.

15. The ATMF Uniform Rules were unanimously adopted by the Fifth General Assembly, with one abstention, subject to a series of amendments to the version decided by the Revision Committee.

16. At its 24th session (Berne, 23-25.6.2009), the Revision Committee adopted extensive amendments to the APTU and ATMF UR, changing parts of the basic concept; see the additional parts of the Explanatory Report at the end of the explanations on both Appendices.

In particular

Article 1
Scope

1. This article defines the scope of application of the ATMF Uniform Rules and states that this is a *regulation concerning procedure*.

2. See also the additional parts of the Explanatory Report below.

Article 2
Definitions

1. This article defines the terms that are necessary to the ATMF Uniform Rules. Some of these definitions are also to be found in other Appendices, e.g. in the CUI Uniform Rules and the CUV Uniform Rules ("rail transport undertaking", "infrastructure manager", "keeper"), while other terms are of relevance only to the ATMF Uniform Rules ("admission of a type of construction", "admission to operation", etc.). In the 19th session, the Revision Committee decided to incorporate all the definitions into the Appendices concerned and not into the basic Convention if and insofar as this proved to be necessary (Report on the 19th session, p. 17).

   At its 24th session, the Revision Committee adopted a comprehensive amendment to this Article; see the additional parts of the Explanatory Report below.

2. The distinction between “Member State” and “Contracting State” (letter a) proves to be necessary since the differing gauges of the networks in the Member States will make it impossible for all the Member States of OTIF to apply the new Appendix F and its Technical Annexes, as well as the new Appendix G (see Nos. 12/13 of the General Points). The term “Contracting State” is used only where it is necessary to distinguish from “Member State” of OTIF for objective reasons.

   As the 24th session of the Revision Committee decided to restructure this Article, this comment now refers to e).

3. The definition provided in letter b) takes account only of the fact that the traffic occurs on infrastructure located on the territory of at least two “Contracting States”, irrespective of the purpose of this traffic. Consequently, even traffic which is not subject to the CIV/CIM Uniform Rules or to the CUI Uniform Rules is subject to the ATMF Uniform Rules.

   As the 24th session of the Revision Committee decided to restructure this Article, this comment now refers to l).

4. The definition provided in letter c) corresponds to the result of the work of the 12th session of the Revision Committee concerning Article 2, letter a) of the CUV Uniform Rules (Report, pp. 8 to 10).

   As the 24th session of the Revision Committee decided to restructure this Article, this definition is now in t) in an amended form.

5. The definition provided in letter d) is more detailed than that of Article 3, letter b) of the CUI Uniform Rules and is compatible with EU law.

   As the 24th session of the Revision Committee decided to restructure this Article, this comment now refers to k).

6. The definition of the keeper provided in letter e) corresponds to that of Article 2, letter c) of the CUV Uniform Rules.

   As the 24th session of the Revision Committee decided to restructure this Article, this definition is now in n) in an amended form.

7. The definitions provided in letters f) to h) explain newly introduced notions, the notion of “technical admission” being understood as a general term with regard to the procedure leading to admission of a type of construction or admission to operation and thus also including the result of the procedure.

   As the 24th session of the Revision Committee decided to restructure this Article, these definitions are now in the following paragraphs:

   f) is now in letter cc) in an amended form;

   g) is now in letter b) in an amended form;

h) is now in letter c) in an amended form.

8. The definition provided in letter i) corresponds to that of Article 2, letter f) of the APTU Uniform Rules and the definition provided in letter j) is based on that of Article 2, letter e) of the APTU Uniform Rules.

As the 24th session of the Revision Committee decided to restructure this Article, the references to APTU are now invalid for these definitions. The definitions are in the following paragraphs:

i) is now in letter w) in an amended form;

j) is now in letter s).

Article 3
Admission to international traffic

1. Admission of vehicles to operation is necessary and justified for reasons of safety in international traffic (§ 1). The purpose of the technical admission according to the procedure in accordance with the ATMF Uniform Rules (§ 2) is to facilitate the free movement of railway vehicles and the free use of other railway material in international traffic. In addition, the protection of the environment and public health must be taken into account (see Article 3 APTU). No other consideration applies to the procedure for the technical admission of railway vehicles and other railway material in accordance with the ATMF Uniform Rules.

2. § 3 states that the technical admission procedure also applies analogously to other railway material and to construction elements of vehicles and other railway material. In these cases, in particular, it is the procedure for the granting of an admission of a type of construction which will be applicable (Article 4, § 1, letter b), Nos. 1 and 2). Throughout the text, the term “railway vehicle” includes the construction elements.

3. The possibility of the technical admission of construction elements is useful because this allows simplification of subsequent technical admission, e.g., of a vehicle as a whole. However, in the case of the technical admission of a vehicle whose construction elements have already been approved, it is necessary to examine the way in which the elements operate together. It is self-evident that the approval of construction elements cannot replace the approval of a vehicle as a whole (Report on the 15th session, p. 40/41).

4. At its 24th session, the Revision Committee decided to include a new Article 3a after this Article. The new Article concerns the interaction with other international agreements; see the additional parts of the Explanatory Report below.

Article 4
Procedure

1. Apart from admission through individual inspection, § 1 letter b) provides for a two-

stage technical admission procedure. This corresponds, to a very large extent, to the technical admission procedure for road vehicles and aircraft. Whereas the admission of a type of construction of a vehicle requires an intensive inspection (squareness, test runs, etc.) of this construction model/prototype, admission to operation can be granted through a simplified procedure provided that the vehicles concerned conform in all respects to the model or prototype that has already been admitted. Admission of a type of construction of a vehicle prototype includes the granting of admission to operation for this prototype.

2. § 1 gives a general description of the course of the procedure. In order to make clear that the different procedural provisions of Article 10 are nevertheless applicable, the Revision Committee was of the opinion that it was judicious to clarify this in § 2 (Report on the 23rd session, p. 18). The 5th General Assembly, which supported a proposal by France seeking substantially to simplify the wording of Article 4, nevertheless retained this clarification (Report, pp. 145-147).

3. At its 24th session, the Revision Committee adopted an amendment and addition to this Article; see the additional parts of the Explanatory Report below.

Article 5
Competent authority

1. § 1 states that the technical admission of railway vehicles - like the technical admission of other means of transport - necessarily comes within the competence of an authority. The activity of rail transport undertakings (the carriage of goods and persons, or management of the infrastructure) is commercial in character. A rail transport undertaking, whether or not it has its own infrastructure, can very well be in competition with other rail transport undertakings operating in the same way which might be using the infrastructure of the competing rail transport undertaking. For reasons of competition, these two activities (technical admission and transport / infrastructure management) must be separate from one another (see also Nos. 1-7 of the General Points).

2. The competence to grant admission of a type of construction and admission to operation can be transferred to qualified, recognised agencies, including private undertakings (legal institution of [German: “beliehenes Unternehmen”] = company authorised by the State). In the case of such a transfer, it is ultimately the State which must assume liability and undertake supervision of these agencies. It is only in this manner that it will be possible to eliminate doubts with regard to the law on competition (Report on the 15th session, p. 42; Report of the 5th General Assembly, pp. 147-151).

3. An “exclusive” transfer to a single rail transport undertaking and/or to the manager of an infrastructure is not permitted when there is a risk of conflict of interest, since that would be contrary to the principles of the law on competition and independence (Report of the 5th General Assembly, pp. 147-151).

4. At its 24th session, the Revision Committee adopted extensive additions to this Article; see the additional parts of the Explanatory Report below.

Article 6
Recognition of technical admission

1. This article sets out the important principle according to which a technical admission of a vehicle which is granted by the competent authority of a Contracting State of the ATMF Uniform Rules, either in the form of admission of a type of construction or in the form of admission to operation in accordance with the provisions of the annexes of the APTU Uniform Rules, is recognised in the other Contracting States of the ATMF Uniform Rules by the authorities, rail transport undertakings operating in those States and the infrastructure managers. This also applies to the related certificates. Within one of the States concerned which are Contracting States of the ATMF Uniform Rules, there is no need for a repeat technical admission procedure in respect of a vehicle which has been technically admitted for international traffic on their territory. A repeat procedure would be contrary to this regulation of international law (see also the remarks relating to Article 19).

2. At its 24th session, the Revision Committee adopted extensive amendments to the provisions on mutual recognition. In this context, this Article was reworded and supplemented by two new Articles 6a and 6b; see the additional parts of the Explanatory Report below.

Article 7 [23]
Construction prescriptions applicable to vehicles

1. § 1 indicates the substantive law on which technical admission of vehicles must be based: the construction prescriptions contained in the Annexes of the APTU Uniform Rules (letter a) and the construction and equipment prescriptions contained in the "Technical" Appendix of RID (letter b). Through integration of the content of certain UIC technical leaflets into one of the Annexes of the APTU Uniform Rules, the UIC rules contained in these leaflets will assume the status of state regulations and will thus become mandatory.

2. This provision does not expressly mention the requirement for technical compatibility with the infrastructure to be used and with the control systems: that goes without saying.

3. Technical admission is a necessary, but not in itself sufficient, condition for the free movement of rolling stock. The rail transport undertaking must have, in addition, a right of access (see Directive 91/440/EEC), an operating licence and a safety certificate, and must also meet various other conditions. These other requirements in addition to technical admission so that railway vehicles can be used in international traffic can be regulated, or are to be regulated, in other perscriptions (Report on the 15th session, p. 43-45).

4. Since, due to continuous technical development, the technical specifications of the

23 As a result of the amendments adopted by the 24th session of the Revision Committee, which also include the introduction of an Article 7a on derogations, the explanations on this Article are mainly of historical significance; see the additional parts of the Explanatory Report below.

Annexes of the APTU Uniform Rules cannot be complete or make provision for all cases, § 2 provides that, in the absence of provisions in the annexes, the generally recognised technical rules can or must replace and complement these specifications. If need be, the technical prescriptions contained in the UIC technical leaflets, which have not yet been validated, may be considered as generally recognised technical rules (Report on the 15th session, p. 46). An unvalidated technical standard has probant force, i.e., it creates the refutable presumption of a generally recognised technical rule (Report on the 15th session, p. 47).

5. Whereas § 2 regulates the case of a gap in the provision of specifications, § 3 permits innovation and technical development. Prior to its introduction at international level, a technical rule could be provisionally recognised at national level (Report on the 15th session, p. 46/47). § 3 only permits dispensation from generally recognised technical rules on condition that it is proved that a level of safety which is at least equal to that resulting from compliance with these rules remains guaranteed. Furthermore, such dispensations must not hinder interoperability or render access to the market more difficult (Report on the Eighteenth session, p. 34).

6. Moreover, the Revision Committee considered that it was expedient to grant to the Committee of Technical Experts the right to decide upon generally recognised technical rules (Report on the Fifteenth session, p. 47). § 4 guarantees identical application of §§ 2 and 3 in all the Contracting States. Control by the Committee of Technical Experts is intended to prevent risks in respect of safety and also to prevent abuse (Report on the 18th session, p. 31). This point of view was supported by the 5th General Assembly (Report, p. 154/155).

Article 8 [24]
Construction prescriptions applicable to other material

1. Article 8 and the Annexes of the APTU Uniform Rules - like Article 7, in respect of railway vehicles - specify the substantive law on which the technical admission of other railway material is based: the construction prescriptions contained in the APTU Uniform Rules.

2. Since, until the new regime is implemented, railway infrastructures remain subject to the principle of territoriality - to date, there are no extra-territorial railway lines excluded from state sovereignty - the procedure for admission of railway infrastructure to operation can remain subject to the national law. This, however, does not necessarily apply to the construction elements and equipment which are produced and technically approved in a Contracting State, but which are not used in that State, being used only in other Contracting States, e.g. rails, electric power supply installations. On this point, the APTU Uniform Rules and ATMF Uniform Rules are of importance for industrial and commercial policy.

3. § 3 states that the obligations of the States which are party to the Euro-

24 As a result of the amendments adopted by the 24th session of the Revision Committee, the explanations on this Article are only of historical significance; see the additional parts of the Explanatory Report below.

pean Agreement on Main International Railway Lines (AGC) of 31 May 1985 and the European Agreement on Important International Combined Transport Lines and Related Installations (AGTC) of 1 February 1991 concerning the equipping and construction of AGC lines or AGTC installations remain applicable. The AGC and AGTC standards and parameters must, however, be in keeping with the technical prescriptions, standards and parameters of the APTU Uniform Rules.

Article 9
Operation prescriptions

1. This article constitutes a link between, on the one hand, the technical specifications concerning the construction and operations of railway vehicles and, on the other hand, those concerning the construction and management of a railway infrastructure.

2. The Revision Committee considered as purely declarative, but nevertheless useful, the provisions obliging all rail transport undertakings to conform to the technical prescriptions of the Annexes of the APTU Uniform Rules, insofar as the provisions relate to the operation of a vehicle in international rail traffic (Report on the 15th session, p. 47/48). A subsequent proposal, seeking to withdraw this article, did not achieve the necessary majority (Report on the 23rd session, p. 22). The operating prescriptions are neither the basis nor the subject-matter of the technical admission of vehicles, although they are closely linked to international rail traffic safety.

3. § 2 contains the important obligation, for infrastructure managers in the Contracting States, to conform to the unified “rail” system, and also the technical prescriptions of the Annexes of the APTU Uniform Rules, insofar as these relate to the construction and management of the infrastructure.

4. At its 24th session, the Revision Committee decided not to publish the Uniform Technical Prescriptions (UTP) and validated technical standards adopted by the OTIF Committee of Technical Experts as Annexes to the text of APTU, but to publish them on the Organisation’s website. A consequential editorial amendment was that the references to the Annexes were replaced with references to the UTP; see also the additional parts of the Explanatory Report at the end of the Explanatory Report on the APTU UR.

Article 10 [25]
Technical admission

1. This article stipulates the prescriptions which relate to the administrative procedure proper.

2. § 1 states that technical admission in the form of admission of a type of construction and admission to operation is an “*ad rem*” admission.

25 As a result of the decisions of the 24th session of the Revision Committee, in the context of which the definitions were restructured, the provisions of this Article were reworded and two new Articles 10a and 10b were introduced, the explanations on this Article are mainly of historical significance only; see the additional parts of the Explanatory Report below.

3. § 2 sets out the persons who, or institutions which, may apply for technical admission, in the form of admission of a type of construction and in the form of admission to operation. According to Article 2, letter e), the keeper is the person who economically exploits a railway vehicle in a permanent manner as a means of transport, i.e., who "uses" the vehicle. They are not necessarily the owner of the vehicle. In view of the developments in the domain of railway, it is important that the keeper is also granted the right to apply for technical admission of a vehicle, all the more so since in future a keeper will no longer be obliged to register a vehicle with a railway (Report on the 18th session, p. 38).

4. § 3 prescribes the documents which must be presented in the case of the simplified admission to operation and the proofs to be furnished in order to benefit from the facility of the simplified procedure.

5. § 4 stipulates that, in the technical admission procedure, i.e., in an admission of a type of construction or an admission to operation, decisions must be made without regard to the position of the applicant for admission.

6. Technical admission must be granted for, in principle, an unlimited period (§ 5). If a vehicle presents a safety risk, it is possible, and obligatory, to withdraw this vehicle from traffic without awaiting the consent of the authority which registered or technically admitted this vehicle. Due to the system of prescribed periodic inspections, even an unlimited admission is, in fact, a limited admission.

7. § 5 furthermore indicates the possibility of granting a differentiated and restricted technical admission, e.g., restricted to certain categories of lines or restricted to traffic in certain conditions.

8. §§ 6 and 7 contain a restrictive list of the grounds on which the competent authorities (§ 8) may withdraw an admission of a type of construction or an admission to operation. The notion of "public health" in § 6 has been added by analogy with Article 3, letter c) of the APTU Uniform Rules (Report on the 18th session, p. 41).

9. §§ 9 and 10 distinguish between the suspension of an admission and its becoming void. Only in the case of a vehicle being put out of service does the admission become void, whereas in all other cases it is merely suspended (Report on the 15th session, p. 54/55). The 5th General Assembly also decided to make provision, in addition to that for the cases of "automatic" suspension of admission to operation as regulated in § 9, letters a) to c), for the possibility of a suspension decided by the competent authority (letter d), the more so since the question of whether the suspension could occur "automatically", i.e., without an administrative notice, was a subject of dispute (Report, pp. 156-160).

10. § 11 refers to the national law with regard to the other procedure prescriptions, namely, the law of the State in which an application for technical admission has been made.

Article 11
Certificates

1. §§ 1 to 3 stipulate that the technical admission must be certified by a document and they prescribe the content of documents relating to an admission of a type of construction and to an admission to operation.

2. The term “manufacturer” must be understood as also referring to an association of manufacturers; the applicant is free to apply for admission of a type of construction on his own behalf only or, if need be, also on behalf of other manufacturers (Report on the 15th session, p. 59).

3. § 4 stipulates the languages in which the certificates must be printed.

4. At its 24th session, the Revision Committee adopted amendments and additions to this Article; see the additional parts of the Explanatory Report below.

Article 12
Uniform models

1. § 1 makes provision for the Organisation to prescribe uniform model of certificates of admission of a type of construction and certificates of admission to operation. The Committee of Technical Experts, as a body of the Organisation in accordance with Article 20 of COTIF, has the authority to devise and adopt these model certificates.

2. § 2 regulates the procedure for the determination of uniform models, particularly entry into force and the possibility of lodging an objection. This was added, upon proposal by Germany, by the 5th General Assembly (Report, p. 161/162).

3. At its 24th session, the Revision Committee adopted amendments and additions to this Article; see the additional parts of the Explanatory Report below.

Article 13
Data bank

1. This article provides for a central register, to be administered under the authority of OTIF, to contain all important data relating to vehicles admitted for international rail traffic (§ 1). This data is recorded on the basis of notices from the competent authorities. Since the term “central register” could give the impression that this is a “paper register”, the Revision Committee preferred the term “data bank” (Report on the 15th session, p. 64). The registering of the data of an admitted vehicle does not replace the technical admission certificate, but merely constitutes a refutable proof (§ 3).

2. According to § 2, certain data must be communicated to the Organisation in all cases. Furthermore, the necessary data is specified by the Committee of Technical Experts. Only this data is registered in the databank.

3. This databank must be available to the authorities of the Contracting States, the rail

transport undertakings and the infrastructure managers, as well as to manufacturers and keepers, in respect of their vehicles (addition made by the 5th General Assembly, Report, p. 163) (§ 4). Its purpose is to facilitate monitoring of whether vehicles used in international rail traffic are actually admitted for this use or whether such vehicles should be immobilised or withdrawn from service.

4. For reasons concerning data protection and the law on competition, not all data registered is open to unlimited access. The Committees of Technical Experts determines - in the form of an Annex, which will be an integral part of the ATMF Uniform Rules (§ 5) (proposal by Germany at the 5th General Assembly) - the data to which there is a right of access, and under what conditions (Report on the 15th session, p. 65 and Report on the 5th General Assembly, pp. 164-166).

   At its 24th session, the Revision Committee adopted extensive amendments and additions to this Article. These dealt particularly with the competences of the OTIF Committee of Technical Experts and among other things, they prescribe that the provisions the Committee establishes will not be published in an Annex to the ATMF UR but on the OTIF website; see the additional parts of the Explanatory Report below.

Article 14
Inscriptions and signs

1. By way of supplement to Article 11, §§ 2 and 3, which regulate the content of certificates, Article 14 prescribes the inscriptions and signs on vehicles which must make it possible to see at a glance whether, and in what condition, the vehicle concerned has been admitted to operation in international rail traffic.

2. The regulation merely states the principle that the inscriptions and signs prescribed in the Annexes of the APTU Uniform Rules must be applied. The Annexes of the APTU Uniform Rules were intended, essentially, to repeat the specifications contained in No. 3.1.16 of the International Convention on the Technical Unity of Railways (UT), in the terms of the April 1986 draft, and in Nos. 5.1, 34.1.1, 34.1.2 and 34.2.3 of RIC and in Nos. 34.1, 34.1.1, §§ 2 and 3 and 34.1.3 of RIV.

3. Vehicles must carry a sign proving that the vehicle has been admitted in accordance with the ATMF UR and APTU UR. This logo is to be determined at a later point by the Committee of Technical Experts (Report on the 18th session, p. 50), which also determines the transition periods during which vehicles carrying different inscriptions and signs are still permitted to operate in international traffic (Report of the 5th General Assembly, pp. 167-170).

4. At its 24th session, the Revision Committee adopted amendments and additions to this Article which also take into account that the Uniform Technical Prescriptions (UTP) and validated technical standards adopted by OTIF's Committee of Technical Experts will not be published as Annexes to the text of APTU, but will be published on the Organisation's website; see the additional parts of the Explanatory Report at the end of the Explanatory Report on the APTU UR and at the end of these explanations.

Article 15 [26]
Maintenance

1. This article merely stipulates the principle that railway vehicles and other railway material must be in a good state of maintenance, such that their condition does not in any way compromise operational safety and does not harm the environment or public health when they are operated or used in international traffic. Servicing, prescribed maintenance operations, servicing intervals, etc. are stipulated by the APTU Uniform Rules and RID.

2. The provision which was initially adopted by the Revision Committee, according to which maintenance and repair work is to be entrusted to qualified and *recognised* workshops (Report on the Eighteenth session, p. 50), was withdrawn in the 23rd session (Report, p. 31/32) and was not reincluded by the 5th General Assembly.

Article 16
Accidents and severe damage

1. This article repeats a provision from No. 16.7 of RIV. The principal obligation, to implement the necessary measures immediately and to determine the causes of the accident or severe damage, rests, in the first place, with the infrastructure manager (§ 1).

2. § 3 stipulates the obligation to inform the competent authorities and also stipulates the power of the latter to require presentation of the damaged vehicle.

3. The purpose of § 4 is the prevention of future accidents, and it is intended to guarantee that international prescriptions are amended and developed in an appropriate manner.

4. At its 24th session, the Revision Committee adopted extensive amendments and additions to this Article; see the additional parts of the Explanatory Report below.

Article 17
Immobilisation and rejection of vehicles

1. The Central Office draft of 19 December 1997 again included an exhaustive list of the grounds and conditions allowing competent authorities, other rail transport undertakings or infrastructure managers to reject a railway vehicle admitted for international traffic. Letters a) to e) of the aforementioned draft had repeated the provisions of Nos. 6.2, 6.4.1, 6.4.2, 6.4.3, 6.4.4, 6.4.5 and 34.1.3 of RIC and of Nos. 2.2, 3.3.1, 3.3.3, 3.4, 3.6, 14.2 and 34.1.2 of RIV. The Revision Committee, however, decided to give this article a more general and more positive wording (Report on the 15th session, p. 69; Report on the 18th session, p. 53/54).

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26 As a result of the decisions of the 24th session of the Revision Committee, in the context of which particular account is taken of developments in EU law, the explanations on this Article are mainly of historical significance only; see the additional parts of the Explanatory Report below.

2. At its 24th session, the Revision Committee adopted amendments and additions to this Article; see the additional parts of the Explanatory Report below.

Article 18
Non-compliance with prescriptions

1. With regard to the legal consequence of non-compliance with the provisions of the ATMF Uniform Rules and APTU Uniform rules, a distinction is made:

   - between the consequences in criminal and civil law, with respect to the infrastructure (§ 2) and

   - all other consequence, including, in particular, in administrative law (§ 1).

2. This is a so-called *global reference*, i.e., reference is not made directly to the substantive law of the Contracting State concerned but, in the first place, to its rules on the conflict of laws. These rules determine the substantive rules which are ultimately applied.

3. At its 24th session, the Revision Committee decided to add a new Article 19 after this Article concerning transitional provisions; see the additional parts of the Explanatory Report below.

Article 19
Disputes

1. Article 19 assigns to the Committee of Technical Experts a mediation role when two or more Contracting States of the ATMF Uniform Rules disagree concerning the technical admission of railway vehicles. Furthermore, such disputes can also be submitted to the arbitration tribunal provided for in Title V of COTIF.

2. As the 24th session of the Revision Committee decided to add a new Article 19 concerning transitional provisions, this comment now relates to Article 20; see also the additional parts of the Explanatory Report below.

Additions to the Explanatory Report

based on the decisions of the 24th session of the Revision Committee (Berne, 23-25.6.2009) and the 9th General Assembly (Berne, 9/10.9.2009)

NOTE: The general remarks and the remarks on individual provisions in this Explanatory Report contain a summary of the information in relation to the following points:

a) Background to and justification for the amendments that were submitted to the Revision Committee and adopted by it, and

b) Discussion on the provisions for the amendment of which the General Assembly is responsible in accordance with Article 33 § 2 and § 4 letter (g) of the Convention, including editorial amendments.

The information referred to in

a) has been examined and approved by the Revision Committee, together with the approved amendments and the General Assembly has noted them;

b) has been examined and approved by the General Assembly following the Revision Committee's considerations and recommendations in this respect.

General Remarks

1. The General Remarks concerning the text amendments to APTU also apply to the ATMF Appendix.

2. When the Explanatory Report refers to EU Member States, it also applies *mutatis mutandis* to States where Community legislation applies as a result of international agreements with the European Community.

3. The Revision Committee followed to a large extent the suggestions made by the Schweinsberg Group as endorsed by the Committee of Technical Experts. Clarifications in the texts and the Explanatory Report were added in particular with regard to the "Entity in charge of maintenance" mentioned in Article 3a and 15, and to the limits of the admission to operation and to the obligations of the competent authority in Article 6.

4. The 9th General Assembly (Berne, 9/10.9.2009) noted the results of the 24th session of the Revision Committee concerning the amendments to Appendix G (ATMF) of the Convention and the Explanatory Report and approved the editorial amendments and the Explanatory Report on Articles 1, 3 and 9 of ATMF. It noted that these amendments are not decisions to which Article 34 of the Convention applies and instructed the Secretary General with regard to bringing these amendments into force to proceed in accordance with Article 35 of COTIF. It also authorised the Secretary General to summarise its decisions on the results of the Revision Committee in the general part of the Explanatory Report.

In particular

Articles marked with * may not be changed by the Revision Committee, only by the General Assembly.

Article 1 *
Scope

1. According to Article 33 § 2 and § 4 letter (g) of the Convention, only the General Assembly could decide on an amendment to this Article, not the Revision Committee.

2. The Article lays down the general scope. The specific rules on the cases in which provisions adopted according to the procedures under APTU for the use of railway material in international transport are applicable, particularly when this concerns States in which EU law applies, are dealt with in this Appendix. Traffic between the following groups of States is dealt with:

   a) only between Member States of OTIF that are not members of the EU or the European Economic Area Agreement (EEA), Article 6 § 3,

   b) only between Member States of OTIF that are also members of the EU or EEA, Article 3a § 3,

   c) from one OTIF Member State that is also a member of the EU or EEA to an OTIF Member State that is not a member of the EU or EEA, Article 3a § 1 and

   d) from one OTIF Member State that is not a member of the EU or EEA to an OTIF Member State that is also a member of the EU or EEA, Article 3a § 2.

3. With regard to matters that are not covered or that are only partly covered by UTPs, see the remarks on Article 7.

4. Where particular matters are not covered by APTU and ATMF or by the provisions that are based on them, it is generally the national technical provisions that apply in the Contracting State in which the application for technical approval is made (see Article 7). In the case of States in which EU law applies, this particularly concerns aspects covered by the EU directives on interoperability (placing interoperability constituents on the market, conformity assessment and verification by notified bodies, etc.), safety (safety certification, safety authorisation, compliance with Common Safety Methods and Common Safety Targets, obligation to report on Common Safety Indicators, accident investigation procedures, etc.) and market access (Directive 95/18/EC on licensing of railway undertakings, Directive 2001/12/EC on the development of the Community's railways, Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification, etc.).

Article 2
Definitions

1. In order to avoid expanding the texts unnecessarily, it was decided only to include in Article 2 of ATMF terms that are used in both Appendices. This Article therefore contains definitions of terms used in APTU and ATMF as well as definitions of those terms that are only used in ATMF. In the English version, the terms are arranged alphabetically. The other language versions follow the sequence of the English version.

2. Regarding the "Committee of Technical Experts" in letter d) it should be noted that for border crossing infrastructure objects such as tunnels, bridges, etc. two Contracting States may agree to set up a specific joint authority like the Intergovernmental Safety Commission for the Eurotunnel between France and United Kingdom. Such authorities are allowed to be separately represented in the Committee of Technical Experts according to Article 16 § 5 c) of the Convention, i.e. without the right to vote.

3. Under the definition "other railway material" in letter s) falls movable equipment not being a railway vehicle for which equipment common specifications to achieve interoperability would be important.

4. For the definition of "serious accident" in letter z) an amount in SDR is mentioned. SDR means the currency of the International Monetary Fund (IMF) which according to Article 9 of the Convention is the unit of account referred to in its Appendices. 1 SDR is equal to approximately 1.27 € (July 2010).

Article 3 *
Admission to international traffic

According to Article 33 § 2 and § 4 letter (g) of the Convention, only the General Assembly could decide on an amendment to this Article, not the Revision Committee. With regard to the editorial amendments to the references in § 2 b) and c), see letter b) of the NOTE under the heading "Explanatory Report".

Article 3a
Interaction with other international agreements

1. This article is new.

2. § 1 deals with the operating approval according to ATMF of a railway vehicle and other railway material which has been approved in accordance with the applicable EC law by a Contracting State. Such item is deemed admitted to operation according to ATMF if

   a) there is full equivalence between the applicable TSIs, which must cover all the vehicle's subsystems, and the applicable UTP in accordance with APTU, and

b) the applicable TSIs do not contain any open points in relation to technical compatibility with the infrastructure, and

c) no derogation applies to the item in question.

3. § 2 deals with the authorisation of placing into service in EU Member States and in Contracting States which apply EU law as a result of international agreements with the European Community of a railway vehicle and other railway material approved in accordance with ATMF. Such item is deemed authorised to be placed into service in accordance with the EU law if

a) there is full equivalence between the applicable UTPs, which must cover all the vehicle's subsystems, and the corresponding TSIs, and

b) the applicable UTPs do not contain any open points in relation to technical compatibility with the infrastructure, and

c) no derogation applies to the item in question.

4. § 3 deals with railway vehicles and other railway material that is only used in Contracting States that apply EU law as EU Member States or on the basis of international agreements. For such items, the applicable EU law applies.

5. The cross-acceptance dealt with in §§ 1 and 2 concerns not only individual approvals, but also admissions of vehicle types in accordance with § 4.

6. The full title of the EC Directive mentioned in § 5 is "Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (Railway Safety Directive)". The Directive was published in the EU Official Journal (OJ) L 164, 30.4.2004, p. 44 –113 and amended by Directive 2008/110/EC, published in OJ L 345, 23.12.2008 p. 62 – 67.

Article 4
Procedure

1. This Article only deals with the approval procedure for vehicles, while with regard to the approval of infrastructure, § 3 refers generally to the provisions that apply in the State concerned (clarified further in Article 8 § 2). For EU Member States, these provisions include the relevant EU law.

2. According to § 1, the procedure is single stage (admission of a vehicle) or two stage (admission of a type of construction with subsequent admission of individual vehicles corresponding to this type of construction).

3. The conformity assessment to be carried out in the approval procedure in accordance with § 2 may cover the entire vehicle or, on the basis of corresponding guidelines from the CTE, it may be split into assessment elements, whose conformity must

be evidenced by a declaration in accordance with a model that also has to be decided by the CTE.

4. According to Article 3 § 3, the provisions of this Article also apply to other railway material.

Article 5
Competent authority

1. With regard to official responsibility, § 1 refers in principle to the law that applies in the respective Contracting State, which, in the case of EU Member States, includes the relevant EU law. However, according to § 4, certain requirements apply to these competent authorities and "suitable recognised bodies" appointed by these authorities. Only the competent authority may issue Certificates of Operation and Design Type Certificates.

2. § 2 does not exclude the competent authority in accordance with § 1 from transferring its competence in respect of conformity assessments wholly or partly to suitable recognised bodies in accordance with § 3, although these bodies may not be

   - rail transport undertakings (RU),
   - infrastructure managers (IM),
   - keepers,
   - entities in charge of maintenance (ECM),
   - design undertakings participating directly or indirectly in the manufacture or maintenance of railway material, or
   - subsidiaries of any of the above indicated.

   The bodies listed are mainly the same as those that are entitled in accordance with Article 10 § 2 to submit applications for a technical certificate to be issued.

   The word "partly" indicates that a "suitable body" may be appointed only for a specific technical competence, e.g. a specific UTP/TSI.

3. § 2 will allow a Contracting State to appoint "suitable bodies" residing in the State. They may carry out tasks equivalent to the EC Notified Bodies. Article 6 § 1 will ensure that the approving authority of all Contracting States and other "suitable bodies" shall accept assessments of compliance with the UTPs that have been carried out by a "suitable body". § 3 contains detailed conditions for bodies recognised as suitable taken from provisions that apply in the EU, particularly as regards their organisation, workforce, working methods, abilities, independence and discretion.

4. § 5 requires that the Secretary General be notified of the bodies responsible for assessments, certifications and approvals and that he must publish this information in a list which must be kept up to date.

5. § 6 requires that the Contracting States monitor continually the bodies referred to in § 2. If it is ascertained that they are not meeting the requirements in accordance with § 3, their competence must be withdrawn and the Secretary General must be informed accordingly.

6. § 7 deals with the course of action in cases where a Contracting State has come to the view that an authority or body for which another Contracting State is responsible is not meeting the requirements in accordance with § 3. Such cases must be submitted to the CTE, which has to take certain measures.

Article 6
Validity of technical certificates

1. § 1 prescribes as a general rule that technical certificates issued by a competent authority (Article 5) in a Contracting State are valid in all other Contracting States. However, use of them for certain vehicles or types of construction (§ 5) is subject to the following conditions.

2. According to § 2, the Railway Undertaking (RU) operating a vehicle must ensure that the vehicle is compatible with the infrastructure to be used.

3. The admission to operation for a vehicle which is in conformity with all the applicable UTPs is valid in all other Contracting States if these UTPs cover all the essential requirements and do not contain any open points in respect of compatibility with the infrastructure and provided that the vehicle is not subject to any specific cases or derogations.

4. For vehicles that do not meet the conditions of § 3, the applicant must meet the conditions according to § 4 for a complementary admission to operation. These conditions are set by the respective competent authorities of the Contracting States in which the admission is to apply, in accordance with the notified national technical provisions that apply there. Such conditions may involve risk analysis and/or additional tests, although duplication and repetition must be excluded and the equivalence table shall be taken account of; furthermore, national technical provisions concerning open points that are not related to compatibility with the infrastructure are not to be checked before the admission to operation is complemented as the necessary checks of such open points have been made when the vehicle is admitted by the first Contracting State according to the national requirement of that state and those requirements shall be cross-accepted. This constitutes the same principles as in the Interoperability Directive.

5. The Certificate of Operation for a vehicle does not grant its holder rights to operate trains or other rights. When operating the vehicle in a train, the law on the use of infrastructure has to be observed, including where applicable the Appendix E (CUI) concerning liability and insurance and including the law of the State where the carrier undertakes the activity of carrier. If that law is that of the EU or corresponding domestic law, the relevant conditions, in particular the requirement for licensing, safety certification etc., have to be met and a liability insurance for the vehicle might have to be taken out.

Article 6a
Recognition of procedural documentation

Article 6b
Recognition of technical and operational tests

The aim of these provisions is to exclude administrative duplication and repetition, particularly as regards technical assessments and tests.

Article 7
Prescriptions applicable to vehicles

1. According to § 1, the prerequisite for vehicles to be allowed to circulate in international traffic is that the UTPs be observed, and if they (are to) carry dangerous goods, RID.

2. Where there are no applicable UTP for a subsystem, i.e. the essential requirements have not (yet) been implemented in an UTP, according to § 2 the technical provisions that apply are those national requirements in force according to Article 12 of APTU of the State in which the vehicle is to be approved.

3. If the UTPs do not cover all the essential requirements or if there is a specific case or an open point in relation to the compatibility of the vehicle with the infrastructure, the national technical provisions applicable to these issues also have to be met. In this case, it must be kept in mind that the equivalence table shall be applied and national technical provisions concerning open points that do not deal with compatibility with the infrastructure may only be checked by the Contracting State that first carries out the approval.

Article 7a
Derogations

This Article instructs the CTE to decide necessary rules for derogations and the related assessment methods.

Article 8
Prescriptions applicable to railway infrastructure

1. § 1 makes clear that the provisions in the UTPs and RID that apply to infrastructure must be observed.

2. § 2 gives further effect to what is laid down in Article 4 § 3.

3. § 3 provides that the rules for cases not covered or not sufficiently covered by UTPs and for derogations also apply by analogy to the area of railway infrastructure.

4. The application of the UTP infrastructure to existing infrastructure is dealt with in APTU Article 8.

Article 9 *
Operation prescriptions

According to Article 33 § 2 and § 4 letter (g) of the Convention, only the General Assembly could decide on an amendment to this Article, not the Revision Committee.

Article 10
Application and granting of Technical Certificates and declarations and related conditions

1. According to § 1, technical certificates may be issued for types of construction or for individual vehicles.

2. § 2 contains an exhaustive list of those entitled to make an application. These correspond largely with those that are excluded from transferring decision-making competence in accordance with Article 5 § 2.

3. § 3 makes clear that the application may be made to the competent authority (Article 5) in any Contracting State, i.e. with no geographical link.

4. § 4 concerns technical certificates for vehicles which, because of their limited degree of conformity, require complementary admissions in accordance with Article 6 § 4. The scope applied for must be described precisely. If this results in the need for admissions/assessments by several competent authorities, these must coordinate in order to speed up the approval process and minimise the cost for the applicant.

5. § 5 provides that admissions may not be carried out for profit and all costs associated with the admission procedure must be borne by the applicant. However, the latter only applies subsidiarily to the national law of the State in which the approval is issued.

6. § 5 letter (a) makes clear that all procedures concerning technical admissions/assessments must be non-discriminatory.

7. § 6 lays down requirements concerning the application documents. These must in all cases contain technical documentation and documentation on servicing and must set out the vehicle characteristics in a way that is sufficient to provide all the information required by the assessing body.

8. According to § 7, assessors must document the content and results of assessments in an Assessment Report.

9. In the (simplified) admission of vehicles for which an admission of the type of construction is already available, § 8 requires that the applicant must attach the certificate of type of construction to the application and must demonstrate in an appropriate manner that the vehicles to be admitted correspond to the type of construction.

10. The first sentence of § 9 makes clear that in principle, technical certificates are to be granted for an unlimited period. However, this does not mean that it may also

be used for an unlimited period. The second sentence reminds users that the scope of the certificate may be limited, although this is not at the discretion of the issuing body, but depends on the particular conditions.

11. § 10 concerns the continued use of technical admissions of the type of construction if the issuing provisions are amended (Article 7). The Contracting State in which the admission of type of construction was issued and the States in which the admission may be used must have consultations on this or, if necessary, on the re-issuing. Even if it is decided that the admission must be re-issued, the type of construction may only be checked that it fulfils the amended provisions, and admissions to operate remain valid.

12. § 11 concerns the continued use of the admission to operate – and, according to § 12, of other certificates also – when vehicles are renovated or upgraded. Appropriately documented projects must be submitted to the Contracting State. This State must involve the CTE if, upon issuing the new approval, there is not full conformity with the applicable UTPs.

Article 10a
Rules for withdrawals or suspensions of technical certificates

1. § 1 deals with the procedure that applies to the withdrawal or suspension of technical certificates in the international arena.

2. Provisions on the withdrawal of the admission to operation, which, according to § 6, also apply by analogy to the admission of type of construction, are given in §§ 2, 3 and 5, and those concerning suspension (of the validity/use) of these certificates are given in § 4.

3. Reasons for a mandatory suspension are

   - insufficient technical maintenance of the vehicle (inspections, servicing, etc.),
   - failure to observe the order to present a vehicle with severe damage, and
   - non-compliance with the provisions of ATMF, the UTPs or the national provisions on which the approval is based.
   - Reasons for a possible withdrawal are
   - non-compliance with the applicable technical requirements in accordance with the UTPs etc.
   - in some cases failure to correct any deficiencies causing non-compliance, and
   - non-compliance with the conditions imposed for a limited approval.

4. According to § 3, only the body that has granted the design type certificate or the certificate of operation may withdraw it (as opposed to suspension).

Article 10b
Rules for assessments and procedures

1. § 1 authorises the CTE to adopt mandatory rules for the assessments and procedural rules for technical admission.

2. If there are supplementary rules within the Contracting States or at EU level, § 2 requires that these be notified to the Secretary General so that the CTE can examine them and they can be published.

Article 11
Technical Certificates and Declarations

1. According to § 1, separate certificates must always be issued for the Design Type Certificate and the Certificate of Operation, but according to § 4, one certificate of operation may be issued for several vehicles of the same design type.

2. The details of what both certificates must contain are laid down in §§ 2 and 3.

3. What is contained in the technical documentation and the documentation on servicing must correspond to the UTPs.

4. A certificate must be prepared in one of the working languages of OTIF (currently German, French and English) and be available in printed form.

5. §§ 7 – 9 prescribe that when the right of disposal over the vehicle changes, the certificates originally issued to the applicant must be handed over.

Article 12
Uniform formats

Mandatory uniform formats of the certificates, declarations and assessment reports specified in ATMF shall be prepared and adopted by the CTE. The CTE may also recognise other existing formats as equivalent, provided they contain at least the same information.

Article 13
Registers

1. This Article serves as a legal basis for an international data bank containing registers of approved railway vehicles (individual vehicles or design types) (§ 1) and of competent authorities who deal with approvals (§ 2). The CTE may include other information in the data bank (§ 3).

2. The CTE has to decide on the following details (§ 4), although consideration must be given to structures that already exist in the Contracting States (national vehicle registers NVRs) or in the EC (ERA) (§ 5):

   a) functional and technical architecture of the data bank,

   b) when and how the required data must be provided,

c) access rights,

d) data bank structure and

e) other administrative and organisational provisions.

3. The data bank may be based on decentralized electronic registers in the Contracting States, including National Vehicle Registers (NVR), but the information shall be retrievable via a central search engine; the data bank and its operating rules need to be coordinated with the National Vehicle Registers set up by EU Member States under Commission Decision 2007/756/EC.

4. In addition, § 7 gives the CTE the right to charge users of the data bank. However, supplying and amending data shall be free of charge.

5. Certain important pieces of information, e.g. a change of keeper, withdrawals from service or immobilisations must be notified to the Secretary General immediately.

6. The registration of data in the data bank has consequences with regard to the provision of evidence (§ 6).

Article 14
Inscriptions and signs

1. The admission of railway vehicles to operation must be demonstrated by affixing a sign to the vehicles (§ 1 a). This sign will be decided by the CTE.

2. Vehicles must also bear the following: an alphanumeric code (“vehicle number”) used to identify the vehicle clearly, which has to be assigned by the competent authority granting the admission to operation, and which must contain the country code of the first admitting State, and other inscriptions and signs prescribed in the UTPs (§ 1 b)).

3. The authority granting the admission to operation must ensure that the signs and inscriptions are marked on the vehicle and that the vehicle number is registered in the NVR (Article 13).

4. According to § 2, the CTE must adopt transitional rules for vehicles that are already in use.

Article 15
Maintenance

1. § 1 sets out the objectives and elements of maintenance.

2. According to § 2, it is up to an accordingly instructed body (Entity in Charge of Maintenance – ECM), which must be registered in the data bank, to organise the maintenance of each vehicle. Such a body is also required according to the law of the EU (see Article 14a of the Railway Safety Directive 2004/49/EC).

3. §§ 3 to 5 contain provisions regarding the interaction between the ECM and the operating railway undertakings, the Maintenance Record File and the possibility to specify further details in Annexes to the ATMF.

4. According to § 4, the ECM shall, for each vehicle for which it is registered as the ECM, keep and update a Maintenance Record File to contain the information required in accordance with § 3 for that vehicle. This includes the vehicle itself and any tank and equipment for which inspections and tests are required. This Maintenance Record File shall be available to the competent authorities for their ordinary inspections and investigations in the case of the vehicle being involved in incidents or accidents.

5. According to § 5, the CTE may adopt guidelines or regulations concerning maintenance workshops and include them in an Annex to ATMF.

Article 16
Accidents, incidents and severe damage

1. According to § 1, in case of accident, incident or severe damage, all parties involved, specifically the IMs, keepers, ECMs and RUs, are required

   - to take measures to ensure the safety of railway traffic, respect for the environment and public health and

   - to establish the causes.

2. § 1 a) supplements § 1 to the effect that the measures referred to must be coordinated, primarily by the IM, and the investigations referred to and any investigations commissioned by the State must be considered as independent from each other.

3. § 2 says that damage is considered to be “severe” if its repair takes at least 72 hours or costs at least 0.18 million SDR. SDR means the currency of the International Monetary Fund (IMF) which according to Article 9 of the Convention is the unit of account referred to in its Appendices. 1 SDR is equal to approximately 1.27 € (July 2010). According to § 5, the CTE may change the minimum amount referred to in § 2.

4. § 3 contains the obligation – which, within the meaning of § 1 a), mainly concerns the IM – to notify the authority or body (Article 5) which admitted the vehicle to circulation of any accidents, incidents or severe damage. That authority or body may require the damaged vehicle to be presented, possibly already repaired, for examination of the validity of the admission to operation and to decide whether the procedure concerning the granting of admission to operation must be repeated.

5. § 4 deals with accident assessment and resulting questions with a view to amending the construction and operating provisions of the UTPs and measures concerning technical certificates affected by this. The CTE has a key role in this respect.

Article 17
Immobilisation and rejection of vehicles

1. Subject to the exceptions in §§ 2 and 3, § 1 lays down as a general rule that railway vehicles that meet all the requirements that apply to them may not be immobilised or rejected.

2. § 2 makes clear that authorities (and their organs) entitled to inspect vehicles may immobilise a vehicle if non-compliance with requirements is suspected, although the examination to establish certainty should be carried out as quickly as possible and in any case within 24 hours.

3. § 3 deals with ordering immobilisations and rejections, which is in any case permissible, as a result of unresolved questions between Contracting States concerning the qualification of a competent authority (Article 5 § 7) and consequences arising from the results of an accident assessment (Article 16 § 4).

Article 18
Non-compliance with the prescriptions

Apart from the consequences in accordance with Article 10 a) with regard to technical certificates, for the legal consequences of failure to comply with the prescriptions, reference is made to national law (including the rules relating to conflict of laws), i.e.

- to the law of the Contracting State in which the IM has his place of business, for the civil and penal consequences concerning infrastructure, and

- in all other cases to the law of the Contracting State whose competent authority (Article 5) issued the first admission to operation.

Article 19
Transitional provisions

1. This is a new Article.

2. The following vehicles that do not meet the requirements of Article 3 § 1 may continue to be used, provided they already exist at the time this Article enters into force, and until they are renovated/upgraded (§ 3):

   - vehicles marked with “RIC” or “RIV” under the conditions set out in §§ 2, 4 and 5,

   - vehicles without such a marking, but which have an approval and marking in accordance with the agreements notified to OTIF between two or more Contracting States, under the conditions set out in §§ 2 a), 4 and 5, and

   - other vehicles on the basis of a complementary admission to operation to be requested from a competent authority, under the conditions set out in § 6.

3. Section 21.1 of RIV 2004 restricts the RIV marking to the case that the wagon

is approved by the competent authority in accordance with the rules in force (at the time and place of approval) and that it complies with the "Technical Unity" (TU) and UIC standards. Section 31 contains provisions concerning maintenance (overhaul). Similar provisions are included in RIC.

4. Approval by a railway undertaking which is a contracting party to RIV or RIC is considered as an approval by the State in the case where there was no other authority with the responsibility for approving railway vehicles at the time of this approval by the railway undertaking.

5. If future decisions taken by the CTE create the need for further transitional provisions, the CTE may adopt them itself in accordance with § 7, i.e. without the Revision Committee having to make an addition to Article 19.

Article 20
Disputes

There are several phases for resolving disputes between Contracting Parties concerning questions on the enforcement of ATMF:

– direct negotiation,

– submission to the CTE and

– arbitration in accordance with COTIF under the conditions of Title V thereof.

Arbitration is an option, not an obligation.