Organisation intergouvernementale pour les transports internationaux ferroviaires

Zwischenstaatliche Organisation für den internationalen Eisenbahnverkehr

Intergovernmental Organisation for International Carriage by Rail

COTIF 1999

Explanatory Report

Uniform Rules concerning the Contract of International Carriage of Passengers by Rail (CIV – Appendix A to the Convention)

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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).