



Intergovernmental Organisation
for International Carriage
by Rail

Bulletin
of International
Carriage
by Rail

2/2007

115th Year • April - June

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Annual subscription to the Bulletin : SFr. 48,-
Orders are to be sent to :

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2/2007

115th year – April - June

Bulletin of International Carriage by Rail

Quarterly publication of the OTIF

In case of reproduction of essays and texts translated by the Secretariat of OTIF, full acknowledgment of author, publisher and source must be given. The opinions expressed in essays are those of the authors.

Official Communications from the Secretariat of OTIF

Lists of lines 1999

CIV list of maritime and inland waterway services

(published on 1 July 2006)

Secretary General circular no 5, 1 May 2007

Chapter “United Kingdom”

Following the deletion of the ferry line Swansea - Cork operated by the “Swansea Cork Ferries” (52 South Mall, IE - Cork) mentioned under B.II.14, the chapter has been re-issued.

See COTIF 1999, Article 24 §§ 1, 3-5.

Work of OTIF’s General Organs

Administrative Committee

107th session

Berne, 23/24 May 2007

For its 107th session, the Administrative Committee met in Berne on 23 and 24 May 2007 under the chairmanship of Mr Carlos del Olmo Morand (Spain).

The main focus of the Administrative Committee’s discussions was the financial outcome for 2006. The Administrative Committee approved the 2006 Financial Management Report. It fixed the rate per kilometre, which forms the basis for calculating the final contributions for 2006, at SFr. 6.70. In connection with this, it should be noted that the 2006 financial year is the last one to be subject to COTIF 1980.

Following a recommendation by the Auditor, the Committee decided to use the surplus income from 2006, which amounts to SFr. 425,559.12, to set up two additional provisions to cover financial commitments arising from obligations prescribed in the Staff Regulations.

The Administrative Committee also noted the general financial situation of OTIF and the current situation with

regard to investments and judged them to be satisfactory.

The Committee also approved the 2006 Annual Report.

The 108th session of the Administrative Committee will be held in Berne on 14 and 15 November 2007.

(Translation)

Legal matters concerning COTIF

Publications and interesting links

Bulletin des transports et de la logistique, Paris, n° 3166/2007, p. 135-138 – Droit allemand. Co-responsabilité civile (A. Gruber)

Idem, n° 3174/2007, p. 279/280 – Vol camionné. Le point (M. Tilche)

Idem, n° 3175/2007, p. 297/298 – Trop payé. Quel délai pour « récupérer » ? (M. Tilche)

Idem, n° 3181/2007, p. 395/396 – Wagons. Qui est détenteur ? (M. Tilche)

European Transport Law / Droit européen des transports / Europäisches Transportrecht, Antwerpen, No. 2-2007, p. 153-170 – Degré de la faute suivant l'art. 29 de la CMR (O. Tuma)

Idem, No. 3-2007, p. 297-316 – The use of electronic means of communication under the Convention on the Contract for the International Carriage of Goods by Road (P.A.J. Martius); p. 355-382 - Degré de la faute suivant l'art. 29 de la CMR – II (O. Tuma)

International Railway Journal, Falmouth, April 2007, p. 48 – New Protocol Will Aid Train Procurement <http://www.railworkinggroup.org/Ontherighttrack.pdf>

Transportrecht, Hamburg, Nr. 4/2007, S. 133-141 – Der Luftfrachtvertrag als multimodaler Vertrag im Rahmen des Montrealer Übereinkommens (G. Kirchhof); S. 141-145 – Zum Inkrafttreten der CMNI (M. Jaegers)

Uniform Law Review/Revue de droit uniforme, Rome, UNIDROIT, N° 2007-1, p.121-140 – Reunification of Certain Rules Relating to Sea Transport Documents : Some Observations on the Uncitral Draft Instrument on Transport Law (Xiaonian Li); p. 140-141 - Brèves considérations sur le projet d'instrument de la CNUDCI

sur le transport des marchandises et sa réglementation des documents de transport maritime (Résumé)

Transport of Dangerous Goods

Working Party on the Transport of Dangerous Goods (WP.15, UN/ECE)

Geneva, 7-10 May 2007

26 Governments and 16 governmental or non-governmental international organisations, including the European Commission, took part in the work of the 82nd session, which was shortened by one day and which was chaired by Mr J. Franco (Portugal).

The meeting dealt with the following subjects concerning multimodal transport:

Texts adopted by the RID/ADR/ADN Joint Meetings in 2006

As only 14 official documents had been submitted, there was plenty of time available for the Working Party to adopt these texts, although it had been anticipated that this work would be carried out at the autumn session. It was decided that the references to unpublished standards would remain in square brackets and would be deleted from the 2009 edition if the standards had not been published by the time the 84th session of the Working Group (May 2008) was held.

Establishment of the Multidisciplinary Group of Experts on Inland Transport Security

The Working Party noted that at its 13th meeting (Geneva, 7 March 2007), the UN/ECE Executive Committee had approved the decision of the Inland Transport Committee to establish a multidisciplinary group of experts on transport security. The group would hold its first session in Geneva on 24 and 25 May and the secretariat indicated that the security of the transport of dangerous goods would be addressed, at least for information purposes.

It was pointed out that the texts of RID, ADR and ADN relating to the security of the carriage of dangerous goods had been harmonised on the basis of the United Nations Recommendations; WP.15 did not intend to amend them before receiving significant feedback on their application. The representative of the European Commission indicated that a study on the enforcement

of the security requirements set out in Chapter 1.10 had been commissioned; the results, expected in autumn 2008, would be communicated to the Working Party.

Evaluation of the implementation of the programme of work of the Inland Transport Committee

The Working Party noted the request by UN/ECE for a biennial evaluation of the work of the various committees. At its next session, the Working Party would have to prepare a proposal for the Inland Transport Committee on the indicators and methodology adopted for measuring the effectiveness of its work.

Draft European Directive

The Working Party noted that on 4 May 2007 the countries of the European Union under the presidency of Germany had finished drafting a “merged” directive applicable to land transport modes, which would supersede both directives 94/55/EC and 96/46/EC and directives 96/35/EC and 2000/18/EC on the introduction of safety advisers and examinations for safety advisers. The directive was expected to be adopted in 2007.

Handling and stowage

Opinions differed on whether ADR should include a reference to codes of best practice for handling and stowage. It was agreed that the question should be discussed first by the RID/ADR/ADN Joint Meeting.

Guidelines for the calculation of risks in the transport of dangerous goods (see Bulletin 4/2006, p. 58)

Several delegations welcomed the German initiative to adapt the guidelines on the calculation of risks in the transport of dangerous goods by rail adopted by the RID Committee of Experts into a decision-making tool with which to determine traffic rules for vehicles carrying dangerous goods. Most of those delegations nonetheless emphasized that they did not think such guidelines should legally be part of ADR. The representative of Germany said that he would present a modified version of the guidelines for use in the carriage of goods by road. Readers are reminded that these guidelines are not an integral part of RID either and so are published for consultation on OTIF’s website.

Placarding of closed or sheeted vehicles carrying tank-containers or portable tanks

Several delegations considered that, contrary to what was stated in the CEFIC proposal, the placarding of closed or sheeted vehicles carrying tank-containers or portable tanks was not generally a problem. However, since practical problems might arise in the specific case of mixed loading of different goods, some delegations indicated that they would be prepared to take up the issue at a later date.

As the issue also concerned rail transport, several delegations said that any decision on this subject should be taken by the RID/ADR/ADN Joint Meeting which, it should be explained, has already accepted this type of placarding.

Action plan to enhance the security of explosives

The Working Party took note of the efforts being made within the European Commission to enhance the security of explosives. An action plan including recommendations should be issued by the European Commission by the end of 2007. The Working Party was invited to familiarise itself with the recommendations, which could have an impact on the transport of dangerous goods.

1993 Protocol to amend ADR

The Working Party again expressed regret that 14 countries had still not deposited the legal instruments required for the Protocol to enter into effect!
(Translation)

Publications and interesting links

Der Gefahrgut-Beauftragte, Hamburg, Nr. 5/2007, S. 8-9 – RID/ADR/ADN 2009 - Hitzige Debatten (J. Conrad)

Gefährliche Ladung, Hamburg, Nr. 5/2007, S. 38 – Maßnahmen gegen Sensibelchen – Fehlauslösungen von Entgleisungsdetektoren (G. Buchmeier, C. Aubry)

Gefährliche Ladung, Hamburg, Nr. 5/2007, S. 48-52 – Neues für 2009 (J. Conrad)

Other legal matters

Rail Protocol

Diplomatic Conference ¹

Luxembourg, 12-23 February 2007

Final Act ² (extract)

The Plenipotentiaries at the diplomatic Conference to Adopt a Rail Protocol to the Convention on International Interests in Mobile Equipment, held under the joint auspices of the International Institute for the Unification of Private Law and the Intergovernmental Organisation for International Carriage by Rail, met in Luxembourg, at the invitation of the Government of the Grand Duchy of Luxembourg, from 12 to 23 February 2007 for the purpose of considering the *draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock*, prepared by three Joint Sessions of a Committee of Governmental Experts of the International Institute for the Unification of Private Law and the Intergovernmental Organisation for International Carriage by Rail.

Representatives of the Governments of 42 States participated in the Conference.

The representatives of the Governments of the following 35 States presented credentials in due and proper form:

Algeria, Australia, Austria, Belgium, Brazil, Cameroon, Canada, Chile, Czech Republic, Finland, France, Gabon, Germany, Greece, Hungary, Indonesia, Ireland, Italy, Japan, Jordan, Kenya, Luxembourg, Moldova, Mexico, Netherlands, Nigeria, Qatar, Russian Federation, Slovak Republic, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Viet Nam.

The following seven States also participated in the Conference:

China, Denmark, India, Poland, Spain, Togo, Turkey.

The following eleven international Organisations and groups were represented by observers:

Aviation Working Group (AWG), Council of the European Union, European Commission, European Investment Bank, Hague Conference on Private International Law, International Rail Transport Committee (CIT), International Union of Combined Road-Rail Transport Companies (UIRR), International Union of Railways (UIC), Rail Working Group (RWG), Southern African Development Community (SADC), World Bank.

The Conference elected as President Mr Jean Mischo (Luxembourg) and further elected as Vice-Presidents:

Mr Abdul Razzaq Abulfeilat (Jordan)

Mr Antonio Paulo Cachapuz de Medeiros (Brazil)

Mr Yuri Khromov (Russian Federation)

Mr Laurent Noël (Switzerland)

Mr Fabien Owono Essono (Gabon).

Secretariat of the Conference [...]

The Conference established a Commission of the Whole, which was chaired by Mr Dominique D'Allaire (Canada) and to which Sir Roy Goode (United Kingdom) acted as *Rapporteur*, and the following Committees:

Credentials Committee

Chairman: Mr Dan Ogochukwu Obelle /
Mr Bello Shehu Ringim (Nigeria)

Members: Indonesia, Luxembourg, Nigeria, Qatar, Russian Federation.

Drafting Committee

Chairman: Mr Antti Leinonen (Finland)

Members: Austria, Canada, Finland, France, Germany, Japan, Kenya, Luxembourg, Russian Federation, United States of America.

Final Clauses Committee

Chairman: Mr Jorge Sánchez Cordero (Mexico)

¹ See Bulletin 1/2007, p. 7 ff. : "The "Luxembourg Protocol" provides new perspectives for financing railway rolling stock"

² www.otif.org/html/e/droit_CD_otif_unidroit_acte_final_2007.php

Members: Greece, Luxembourg, Mexico, United States of America.

Registry Committee

Chairman: Mr Henrik Kjellin (Sweden)

Members: Canada, Finland, France, Gabon, Germany, Greece, Indonesia, Italy, Luxembourg, Nigeria, Russian Federation, Slovakia, Sweden, Switzerland, United Kingdom, United States of America, Vietnam.

Following its deliberations, the Conference adopted the text of the *Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock*.

The said Protocol has been opened for signature in Luxembourg this day.

The texts of the said Protocol and the Resolutions adopted by the Conference are subject to verification by the Secretariat of the Conference under the authority of the President of the Conference within a period of ninety days from the date hereof as to the linguistic changes required to make the texts in the different languages consistent with one another.

The Conference furthermore adopted by consensus the following Resolutions:

RESOLUTION NO. 1

relating to the establishment of the Supervisory Authority and International Registry for railway rolling stock

THE CONFERENCE,

HAVING ADOPTED the *Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock* (the *Protocol*);

HAVING REGARD to Article XII of the Protocol;

HAVING REGARD to the *Convention on International Interests in Mobile Equipment* (the *Convention*), opened to signature in Cape Town on 16 November 2001;

CONSCIOUS of the need to undertake preparatory work regarding the establishment of the International Registry for railway rolling stock (the *International Registry*) in

order to ensure that it be operational by the time when the Protocol enters into force;

CONSIDERING the advantages of formulating the policies and procedures as well as adapting the procedures employed in establishing the International Registry for aircraft objects in order to facilitate the expeditious establishment of the International Registry and contain the costs thereof to the extent possible;

CONSIDERING that the General Assembly of the Intergovernmental Organisation for International Carriage by Rail (OTIF) at its seventh session, held on 23 and 24 November 2005 (AG 7/9 of 24 November 2005), agreed that, subject to certain conditions, OTIF assume the role of Secretariat of the Supervisory Authority of the International Registry and to defer further decisions on this matter until after the diplomatic Conference;

RESOLVES:

TO SET UP, pending the entry into force of the Protocol, a Preparatory Commission (the *Commission*) to act with full authority as Provisional Supervisory Authority for the establishment of the International Registry, in consultation with the International Institute for the Unification of Private Law (UNIDROIT) and OTIF, and to be composed of

- (1) the following States, the representatives of which shall have the necessary qualifications and experience:
 - (a) States that have ratified or acceded to the Convention;
 - (b) ten States from among the States that participated in the Conference (*negotiating States*); and
 - (c) six States nominated by the co-sponsoring Organisations of the Conference, UNIDROIT and OTIF,
 such States to be determined by the President of the Conference,
- (2) the Chairmen of each of the Commissions and Committees established by the Conference, where the States of such Chairmen are not otherwise represented,
- (3) one representative each from the UNIDROIT and OTIF Secretariats, and

- (4) one representative of the Rail Working Group, other negotiating States also being free to participate as observers in meetings of the Commission.

THAT all participants in the Commission's work shall participate without any financial implications for either the Commission or the co-sponsoring Organisations.

THAT the Commission shall have such legal personality as may be necessary;

TO DIRECT the Commission to carry out, in consultation with UNIDROIT and OTIF, the following functions:

- (1) to establish its rules of procedure and methods of work, including the appointment of its chairman, the setting up of expert committees and the determination of the place and dates of meetings to carry out its work;
- (2) to prepare regulations and procedures for the International Registry;
- (3) to ensure that the International Registry be set up in accordance with a fair selection process, so as to ensure both technical capacity and operational features which can maintain such a registry at a cost as low as feasible;
- (4) to enter into a contract with the Registrar that makes provision for the testing of the software, the initial fees, the user application process and timelines for the consideration of the inclusion of other than the initially selected language to be used for registrations and searches, as well as other relevant details;
- (5) to initiate consultations capable of ensuring effective co-operation with relevant existing national and regional registries;

TO DIRECT the Commission to make use, in the carrying out of its functions, to the maximum extent feasible and appropriate, of the prior experience acquired in the establishment and operation of the International Registry for aircraft objects, as well as the guidance of the Rail Registry Task Force and the Registry Committee of the Conference;

TO DIRECT the Commission to provide for the participation of private sector advisers, including members of the Rail Working Group and in particular

representatives of manufacturers, railway operators and financiers;

TO DIRECT the Commission to prepare the establishment of the Supervisory Authority, whose members shall be composed of States as provided under Article XII of the Protocol, the establishment of the Supervisory Authority to be effected by Resolution of the Commission in consultation with UNIDROIT and OTIF;

TO DIRECT the Commission to draft the first regulations no later than three months prior to the entry into force of the Protocol, so that they may take effect upon its entry into force, and, prior to issuing such regulations, publish draft regulations in good time for review and comment and thereafter consult with representatives of manufacturers, operators and financiers thereon; and

TO REQUEST UNIDROIT and OTIF to provide the Commission with such administrative assistance and facilities as may be necessary and to the extent feasible.

RESOLUTION NO. 2

relating to technical assistance with regard to the implementation and use of the International Registry for railway rolling stock

THE CONFERENCE,

MINDFUL of the objectives of the *Convention on International Interests in Mobile Equipment (the Convention)* and the *Luxembourg Protocol to the Convention on Matters specific to Railway Rolling Stock (the Protocol)*;

DESIROUS of facilitating the implementation of the Convention and the Protocol as well as the prompt implementation and use of the International Registry for railway rolling stock (the *International Registry*);

RESOLVES:

TO ENCOURAGE all States, international Organisations and private parties, such as the rail manufacturing and financial industries, to assist developing States in any appropriate way, including the provision of facilities and the know-how necessary to use the International Registry, so as to allow them to benefit from the Convention and the Protocol as early as possible, and, to this effect, to set up a fund to which contributions shall be made on a voluntary basis and

which will function under the authority of the Supervisory Authority.

RESOLUTION NO. 3

expressing the gratitude of the Conference to the Government of Luxembourg for organising the Conference and designating Luxembourg as host State of the International Registry for railway rolling stock

THE CONFERENCE,

HAVING ADOPTED the *Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock* (the *Protocol*);

MINDFUL of the leadership role played by the Government of the Grand Duchy of Luxembourg in finalising the Protocol and the dedication of its officials to the resolution of all the outstanding issues in relation to the Protocol during the Conference;

GRATEFUL to the Government of the Grand Duchy for having organised the Conference;

EXPRESSES its deep gratitude and sincere appreciation to the Government of the Grand Duchy and its officials; and

RECOGNISING the common desire for ensuring the rapid and effective setting up of the International Registry for railway rolling stock (the *International Registry*) for the benefit of all nations;

CONSCIOUS of the central geographic location of the Grand Duchy in Europe and in the European rail system;

MINDFUL that the Grand Duchy is an important participant in the European and international financial markets;

APPRECIATIVE of the assurance given by the Government of the Grand Duchy that it would actively support the setting up of the International Registry;

RESOLVES that the Grand Duchy of Luxembourg shall be the host State of the International Registry.

RESOLUTION NO. 4

relating to the Official Commentary on the Luxembourg Protocol

THE CONFERENCE,

HAVING ADOPTED the *Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock* (the *Protocol*);

MINDFUL of the existing Official Commentary to the Convention and the Protocol thereto on Matters specific to Aircraft Equipment and its importance;

RECOGNISING the increasing use of commentaries of this type in the context of modern, technical commercial law instruments;

CONSCIOUS of the need for an official commentary on the Protocol as an aid for those called upon to work with this instrument; and

MINDFUL that the Explanatory Report on the draft Rail Protocol submitted to the Conference (DCME-RP – Doc. 4) provides a sound starting point for the further development of this official commentary;

RESOLVES:

TO REQUEST the preparation of an official commentary on the Protocol by the *Rapporteur*, in close co-operation with OTIF and UNIDROIT and in co-ordination with the Chairman of the Commission of the Whole, the Chairman of the Final Clauses Committee, the Chairman of the Registry Committee and the Chairman and members of the Drafting Committee; and

TO REQUEST that the Official Commentary be circulated for comment in draft form among the States and observers that participated in the Conference prior to its publication being authorised.

RESOLUTION NO. 5

relating to Article 2(3)(c) and Article 51 of the Convention on International Interests in Mobile Equipment

THE CONFERENCE,

HAVING REGARD to the provisions of Article 2(3)(c) and Article 51 of the Convention on International Interests in Mobile Equipment (the *Convention*)

contemplating the adoption of a Protocol thereto on Matters specific to Space Assets (the *future Space Assets Protocol*);

OBSERVING that preliminary consideration has begun with regard to a fourth Protocol to the Convention on Matters specific to Agricultural, Construction and Mining Equipment;

CONSIDERING that the future Space Assets Protocol will be applied together with the terms of the Convention and is expected to include analogous provisions to those contained in the Protocol to the Convention on Matters specific to Aircraft Equipment;

CONSIDERING that considerable progress has already been made in relation to the development of the future Space Assets Protocol and that such progress has been welcomed by the Conference;

CONSIDERING that the completion of the future Space Assets Protocol is to be expected to confer significant benefits on the international community as a whole, in particular developing States; and

CONSIDERING IT DESIRABLE to involve as wide a range of States as possible in the process for the adoption of the future Space Assets Protocol and to keep the costs of such adoption to a reasonable minimum;

RESOLVES:

TO INVITE negotiating States to work towards the expeditious adoption of the future Space Assets Protocol;

TO INVITE States to initiate preliminary work in 2007 on a future Protocol to the Convention on Matters specific to Agricultural, Construction and Mining Equipment;

TO INVITE the International Institute for the Unification of Private Law (UNIDROIT) to use its good offices to facilitate such objectives;

TO INVITE UNIDROIT to give all its member States and member States of the United Nations or relevant specialised Agencies which are not members of UNIDROIT an opportunity to participate in the negotiation and adoption of such future Protocols in a cost-effective manner; and

TO INVITE the competent bodies of UNIDROIT to consider favourably the implementation of an expedited procedure for the adoption of such Protocols, and in

particular to consider the Conferences required for their adoption being as short as possible consistently with the need for States to give such Protocols proper consideration.

RESOLUTION NO. 6

concerning the regimen of the Registrar's liability under Article XV(5) of the Protocol

THE CONFERENCE,

MINDFUL of the economic rationale underlying the regimen of the Registrar's liability provided for under Article XV(5) of the *Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock (the Protocol)*;

CONCERNED nevertheless to ensure that the regimen to be provided for under the Protocol in this matter be such as to facilitate adoption of the Protocol by as many States as possible;

RESOLVES

TO INVITE the Supervisory Authority to consider the desirability of reviewing the liability limit provided for under the aforementioned provision at the earliest possible opportunity, subject to the finding of the necessary insurance cover.

Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock¹

THE STATES PARTIES TO THIS PROTOCOL

CONSIDERING it necessary to implement the Convention on International Interests in Mobile Equipment (the "Convention") as it relates to railway rolling stock, in the light of the purposes set out in the preamble to the Convention,

MINDFUL of the need to adapt the Convention to meet the particular requirements of railway rolling stock and their finance,

HAVE AGREED upon the following provisions relating to railway rolling stock:

¹ www.otif.org/html/e/droit_CD_otif_unidroit_acte_final_2007.php

Chapter I

Sphere of application and general provisions

together with all data, manuals and records relating thereto.

Article I — Defined terms

1. In this Protocol, except where the context otherwise requires, terms used in it have the meanings set out in the Convention.
2. In this Protocol the following terms are employed with the meanings set out below:
 - (a) “guarantee contract” means a contract entered into by a person as guarantor;
 - (b) “guarantor” means a person who, for the purpose of assuring performance of any obligations in favour of a creditor secured by a security agreement or under an agreement, gives or issues a suretyship or demand guarantee or a standby letter of credit or any other form of credit insurance;
 - (c) “insolvency-related event” means:
 - (i) the commencement of the insolvency proceedings; or
 - (ii) the declared intention to suspend or actual suspension of payments by the debtor where the creditor’s right to institute insolvency proceedings against the debtor or to exercise remedies under the Convention is prevented or suspended by law or State action;
 - (d) “primary insolvency jurisdiction” means the Contracting State in which the centre of the debtor’s main interests is situated, which for this purpose shall be deemed to be the place of the debtor’s statutory seat or, if there is none, the place where the debtor is incorporated or formed, unless proved otherwise;
 - (e) “railway rolling stock ” means vehicles movable on a fixed railway track or directly on, above or below a guideway, together with traction systems, engines, brakes, axles, bogies, pantographs, accessories and other components, equipment and parts, in each case installed on or incorporated in the vehicles, and

Article II — Application of Convention as regards railway rolling stock

1. The Convention shall apply in relation to railway rolling stock as provided by the terms of this Protocol.
2. The Convention and this Protocol shall be known as the Convention on International Interests in Mobile Equipment as applied to railway rolling stock.

Article III — Derogation

The parties may, by agreement in writing, exclude the application of Article IX and, in their relations with each other, derogate from or vary the effect of any of the provisions of this Protocol except Article VII(3) and (4).

Article IV — Representative capacities

A person may, in relation to railway rolling stock, enter into an agreement, effect a registration as defined by Article 16(3) of the Convention and assert rights and interests under the Convention, in an agency, trust or representative capacity.

Article V — Identification of railway rolling stock in the agreement

1. For the purposes of Article 7(c) of the Convention and Article XVIII(2) of this Protocol, a description of railway rolling stock is sufficient to identify the railway rolling stock if it contains:
 - (a) a description of the railway rolling stock by item;
 - (b) a description of the railway rolling stock by type;
 - (c) a statement that the agreement covers all present and future railway rolling stock; or
 - (d) a statement that the agreement covers all present and future railway rolling stock except for specified items or types.
2. For the purposes of Article 7 of the Convention, an interest in future railway rolling stock identified in accordance with the preceding paragraph shall be constituted as an international

interest as soon as the chargor, conditional seller or lessor acquires the power to dispose of the railway rolling stock, without the need for any new act of transfer.

Article VI — Choice of law

1. This Article applies only where a Contracting State has made a declaration pursuant to Article XXVII.
2. The parties to an agreement or a related guarantee contract or subordination agreement may agree on the law which is to govern their contractual rights and obligations, wholly or in part.
3. Unless otherwise agreed, the reference in the preceding paragraph to the law chosen by the parties is to the domestic rules of law of the designated State or, where that State comprises several territorial units, to the domestic law of the designated territorial unit.

Chapter II

Default remedies, priorities and assignments

Article VII — Modification of default remedies provisions

1. In addition to the remedies specified in Chapter III of the Convention, the creditor may, to the extent that the debtor has at any time so agreed and in the circumstances specified in that Chapter, procure the export and physical transfer of railway rolling stock from the territory in which it is situated.
2. The creditor shall not exercise the remedies specified in the preceding paragraph without the prior consent in writing of the holder of any registered interest ranking in priority to that of the creditor.
3. Article 8(3) of the Convention shall not apply to railway rolling stock. Any remedy given by the Convention in relation to railway rolling stock shall be exercised in a commercially reasonable manner. A remedy shall be deemed to be exercised in a commercially reasonable manner where it is exercised in conformity with a provision of the agreement except where such a provision is manifestly unreasonable.
4. A chargee giving fourteen or more calendar days' prior written notice of a proposed sale or lease to

interested persons as provided by Article 8(4) of the Convention shall be deemed to satisfy the requirement of giving the "reasonable prior notice" specified therein. The foregoing shall not prevent a chargee and a chargor or a guarantor from agreeing to a longer period of prior notice.

5. Subject to any applicable safety laws and regulations, a Contracting State shall ensure that the relevant administrative authorities expeditiously co-operate with and assist the creditor to the extent necessary for the exercise of the remedies specified in paragraph 1.
6. A chargee proposing to procure the export of railway rolling stock under paragraph 1 otherwise than pursuant to a court order shall give reasonable prior notice in writing of the proposed export to:
 - (a) interested persons specified in Article 1 (m)(i) and (ii) of the Convention; and
 - (b) interested persons specified in Article 1(m)(iii) of the Convention who have given notice of their rights to the chargee within a reasonable time prior to the export.

Article VIII — Modification of provisions regarding relief pending final determination

1. This Article applies only in a Contracting State which has made a declaration pursuant to Article XXVII and to the extent stated in such declaration.
2. For the purposes of Article 13(1) of the Convention, "speedy" in the context of obtaining relief means within such number of calendar days from the date of filing of the application for relief as is specified in a declaration made by the Contracting State in which the application is made.
3. Article 13(1) of the Convention applies with the following being added immediately after subparagraph (d):
 - "(e) if at any time the debtor and the creditor specifically agree, sale of the object and application of proceeds therefrom",
 and Article 43(2) applies with the insertion after the words "Article 13(1)(d)" of the words "and (e)".

4. Ownership or any other interest of the debtor passing on a sale under the preceding paragraph is free from any other interest over which the creditor's international interest has priority under the provisions of Article 29 of the Convention.
 5. The creditor and the debtor or any other interested person may agree in writing to exclude the application of Article 13(2) of the Convention.
 6. With regard to the remedies in Article VII(1):
 - (a) they shall be made available by the administrative authorities in a Contracting State no later than seven calendar days after the creditor notifies such authorities that the relief specified in Article VII(1) is granted or, in the case of relief granted by a foreign court, recognised by a court of that Contracting State, and that the creditor is entitled to procure those remedies in accordance with the Convention; and
 - (b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable safety laws and regulations.
 7. Paragraphs 2 and 6 shall not affect any applicable safety laws and regulations.
- (b) the date on which the creditor would be entitled to possession of the railway rolling stock if this Article did not apply.
 4. For the purposes of this Article, the "waiting period" shall be the period specified in a declaration of the Contracting State which is the primary insolvency jurisdiction.
 5. Unless and until the creditor is given the opportunity to take possession under paragraph 3:
 - (a) the insolvency administrator or the debtor, as applicable, shall preserve the railway rolling stock and maintain it and its value in accordance with the agreement; and
 - (b) the creditor shall be entitled to apply for any other forms of interim relief available under the applicable law.
 6. Sub-paragraph (a) of the preceding paragraph shall not preclude the use of the railway rolling stock under arrangements designed to preserve the railway rolling stock and maintain it and its value.
 7. The insolvency administrator or the debtor, as applicable, may retain possession of the railway rolling stock where, by the time specified in paragraph 3, it has cured all defaults other than a default constituted by the opening of insolvency proceedings and has agreed to perform all future obligations under the agreement and related transaction documents. A second waiting period shall not apply in respect of a default in the performance of such future obligations.
 8. With regard to the remedies in Article VII(1):
 - (a) they shall be made available by the administrative authorities in a Contracting State no later than seven calendar days after the date on which the creditor notifies such authorities that it is entitled to procure those remedies in accordance with the Convention; and
 - (b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable safety laws and regulations.

Article IX — Remedies on insolvency

1. This Article applies only where a Contracting State that is the primary insolvency jurisdiction has made a declaration pursuant to Article XXVII.
2. References in this Article to the "insolvency administrator" shall be to that person in its official, not in its personal, capacity.

Alternative A

3. Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall, subject to paragraph 7, give possession of the railway rolling stock to the creditor no later than the earlier of:
 - (a) the end of the waiting period; and

9. No exercise of remedies permitted by the Convention or this Protocol may be prevented or delayed after the date specified in paragraph 3.
10. No obligations of the debtor under the agreement may be modified without the consent of the creditor.
11. Nothing in the preceding paragraph shall be construed to affect the authority, if any, of the insolvency administrator under the applicable law to terminate the agreement.
12. No rights or interests, except for non-consensual rights or interests of a category covered by a declaration pursuant to Article 39(1) of the Convention, shall have priority in insolvency proceedings over registered interests.
13. The Convention as modified by Articles VII and XXV of this Protocol shall apply to the exercise of any remedies under this Article.

Alternative B

3. Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, upon the request of the creditor, shall give notice to the creditor within the time specified in a declaration of a Contracting State pursuant to Article XXVII whether it will:
 - (a) cure all defaults other than a default constituted by the opening of insolvency proceedings and agree to perform all future obligations, under the agreement and related transaction documents; or
 - (b) give the creditor the opportunity to take possession of the railway rolling stock, in accordance with the applicable law.
4. The applicable law referred to in sub-paragraph (b) of the preceding paragraph may permit the court to require the taking of any additional step or the provision of any additional guarantee.
5. The creditor shall provide evidence of its claims and proof that its international interest has been registered.
6. If the insolvency administrator or the debtor, as applicable, does not give notice in conformity with paragraph 3, or when the insolvency administrator or the debtor has declared that it

will give the creditor the opportunity to take possession of the railway rolling stock but fails to do so, the court may permit the creditor to take possession of the railway rolling stock upon such terms as the court may order and may require the taking of any additional step or the provision of any additional guarantee.

7. The railway rolling stock shall not be sold pending a decision by a court regarding the claim and the international interest.

Alternative C

3. Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall within the cure period:
 - (a) cure all defaults other than a default constituted by the opening of insolvency proceedings and agree to perform all future obligations, under the agreement and related transaction documents; or
 - (b) give the creditor the opportunity to take possession of the railway rolling stock in accordance with the applicable law.
4. Before the end of the cure period, the insolvency administrator or the debtor, as applicable, may apply to the court for an order suspending its obligation under sub-paragraph (b) of the preceding paragraph for a period commencing from the end of the cure period and ending no later than the expiration of the agreement or any renewal thereof, and on such terms as the court considers just (the "suspension period"). Any such order shall require that all sums accruing to the creditor during the suspension period be paid from the insolvency estate or by the debtor as they become due and that the insolvency administrator or the debtor, as applicable, perform all other obligations arising during the suspension period.
5. If an application is made to the court under the preceding paragraph, the creditor shall not take possession of the railway rolling stock pending an order of the court. If the application is not granted within such number of calendar days from the date of filing of the application for relief as is specified in a declaration made by the Contracting State in which the application is made, the application will be deemed withdrawn unless the creditor and the insolvency

- administrator or the debtor, as applicable, otherwise agree.
6. Unless and until the creditor is given the opportunity to take possession under paragraph 3:
 - (a) the insolvency administrator or the debtor, as applicable, shall preserve the railway rolling stock and maintain it and its value in accordance with the agreement; and
 - (b) the creditor shall be entitled to apply for any other forms of interim relief available under the applicable law.
 7. Sub-paragraph (a) of the preceding paragraph shall not preclude the use of the railway rolling stock under arrangements designed to preserve and maintain it and its value.
 8. Where during the cure period or any suspension period the insolvency administrator or the debtor, as applicable, cures all defaults other than a default constituted by the opening of insolvency proceedings and agrees to perform all future obligations under the agreement and related transaction documents, the insolvency administrator or debtor may retain possession of the railway rolling stock and any order made by the court under paragraph 4 shall cease to have effect. A second cure period shall not apply in respect of a default in the performance of such future obligations.
 9. With regard to the remedies in Article VII(1):
 - (a) they shall be made available by the administrative authorities in a Contracting State no later than seven calendar days after the date on which the creditor notifies such authorities that it is entitled to procure those remedies in accordance with the Convention; and
 - (b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable safety laws and regulations.
 10. Subject to paragraphs 4, 5 and 8, no exercise of remedies permitted by the Convention may be prevented or delayed after the cure period.
 11. Subject to paragraphs 4, 5 and 8, no obligations of the debtor under the agreement and related transactions may be modified in insolvency proceedings without the consent of the creditor.
 12. Nothing in the preceding paragraph shall be construed to affect the authority, if any, of the insolvency administrator under the applicable law to terminate the agreement.
 13. No rights or interests, except for non-consensual rights or interests of a category covered by a declaration pursuant to Article 39(1) of the Convention, shall have priority in insolvency proceedings over registered interests.
 14. The Convention as modified by Articles VII and XXV of this Protocol shall apply to the exercise of any remedies under this Article.
 15. For the purposes of this Article, the “cure period” shall be the period, commencing with the date of the insolvency-related event, specified in a declaration of the Contracting State which is the primary insolvency jurisdiction.

Article X — Insolvency assistance

1. This Article applies only in a Contracting State which has made a declaration pursuant to Article XXVII(1).
2. The courts of a Contracting State in which railway rolling stock is situated shall, in accordance with the law of the Contracting State, co-operate to the maximum extent possible with foreign courts and foreign insolvency administrators in carrying out the provisions of Article IX.

Article XI — Debtor provisions

1. In the absence of a default within the meaning of Article 11 of the Convention, the debtor shall be entitled to the quiet possession and use of the railway rolling stock in accordance with the agreement as against:
 - (a) its creditor and the holder of any interest from which the debtor takes free pursuant to Article 29(4)(b) of the Convention unless and to the extent that the debtor has otherwise agreed; and

- (b) the holder of any interest to which the debtor's right or interest is subject pursuant to Article 29(4)(a) of the Convention, but only to the extent, if any, that such holder has agreed.
2. Nothing in the Convention or this Protocol affects the liability of a creditor for any breach of the agreement under the applicable law in so far as that agreement relates to railway rolling stock.

Chapter III
Registry provisions relating to
international interests in railway rolling stock

Article XII — The Supervisory Authority and the Registrar

1. The Supervisory Authority shall be a body established by representatives, one representative to be appointed:
- (a) by each State Party;
 - (b) by each of a maximum of three other States to be designated by the International Institute for the Unification of Private Law (UNIDROIT); and
 - (c) by each of a maximum of three other States to be designated by the Intergovernmental Organisation for International Carriage by Rail (OTIF).
2. In the designation of the States referred to in subparagraphs (b) and (c) of the preceding paragraph regard shall be had to the need to ensure broad geographical representation.
3. The term of appointment of the representatives appointed pursuant to subparagraphs (b) and (c) of paragraph 1 shall be that specified by the designating Organisations. The terms of those representatives serving on the date when this Protocol enters into force for the tenth State Party shall expire no later than two years after that date.
4. The representatives referred to in paragraph 1 shall adopt the initial rules of procedure for the Supervisory Authority. Adoption shall require agreement of:
- (a) a majority of all the representatives; and
 - (b) a majority of the representatives appointed pursuant to sub-paragraph (a) of paragraph 1.
5. The Supervisory Authority may establish a commission of experts consisting of:
- (a) persons nominated by Signatory and Contracting States and having the necessary qualifications and experience; and
 - (b) other experts as necessary
- and entrust the commission with the task of assisting the Supervisory Authority in the discharge of its functions.
6. A secretariat (the Secretariat) shall assist the Supervisory Authority in the discharge of its functions, as directed by the Supervisory Authority. The Secretariat shall be OTIF.
7. In the event that the Secretariat becomes unable or unwilling to discharge its functions, the Supervisory Authority shall designate another Secretariat.
8. The Secretariat shall, on being satisfied that the International Registry is fully operational, forthwith deposit a certificate to that effect with the Depositary.
9. The Secretariat shall have legal personality where not already possessing such personality, and shall enjoy, in relation to its functions under the Convention and this Protocol, the same exemptions and immunities as are provided to the Supervisory Authority under Article 27(3) of the Convention and to the International Registry under Article 27(4) of the Convention.
10. A measure taken by the Supervisory Authority that affects only the interests of a State Party or a group of States Parties shall be taken if such State Party or the majority of the group of States Parties also approve of the measure. A measure that could adversely affect the interests of a State Party or a group of States Parties shall have effect in such State Party or group of States Parties if such State Party or the majority of the group of States Parties also approve of the measure.
11. The first Registrar shall be appointed for a period of not less than five or more than ten years. Thereafter, the Registrar shall be appointed or re-

appointed for successive periods each not exceeding ten years.

Article XIII — Designated entry points

1. A Contracting State may at any time designate, by declaration, an entity or entities as the entry point or entry points through which there shall or may be transmitted to the International Registry information required for registration other than registration of a notice of a national interest or of a right or interest under Article 40 of the Convention in either case arising under the laws of another State. The various entry points shall be operated at least during working hours in their respective territories.
2. A designation made under the preceding paragraph may permit, but not compel, use of a designated entry point or entry points for information required for registrations in respect of notices of sale.

Article XIV — Identification of railway rolling stock for registration purposes

1. For the purposes of Article 18(1)(a) of the Convention, the regulations shall prescribe a system for the allocation of identification numbers by the Registrar which enable the unique identification of items of railway rolling stock. The identification number shall be:
 - (a) affixed to the item of railway rolling stock;
 - (b) associated in the International Registry with the manufacturer's name and the manufacturer's identification number for the item so affixed; or
 - (c) associated in the International Registry with a national or regional identification number so affixed.
2. For the purposes of the preceding paragraph, a Contracting State may, by declaration, state the system of national or regional identification numbers that shall be used with respect to items of railway rolling stock subject to an international interest that is created or provided for, or is intended to be created or provided for, by an agreement entered into by a debtor situated in that Contracting State at the time of the conclusion of that agreement. Such a national or regional identification system shall, subject to agreement

between the Supervisory Authority and the Contracting State making the declaration, ensure the unique identification of each item of railway rolling stock to which the system applies.

3. A declaration by a Contracting State according to the preceding paragraph shall include detailed information on the operation of the national or regional identification system.
4. A registration in respect of an item of railway rolling stock for which a declaration pursuant to paragraph 2 has been made shall, in order for the registration to be valid, specify all the national or regional identification numbers to which the item has been subject since the entry into force of this Protocol under Article XXIII(1) and the time during which each number has applied to the item.

Article XV — Additional modifications to Registry provisions

1. For the purposes of Article 19(6) of the Convention, the search criteria at the International Registry shall be established by the regulations.
2. For the purposes of Article 25(2) of the Convention, and in the circumstances there described, the holder of a registered prospective international interest or a registered prospective assignment of an international interest shall take such steps as are within its power to procure the discharge of the registration no later than ten calendar days after the receipt of the demand described in such paragraph.
3. Where a subordination has been registered and the obligations of the debtor to the beneficiary of the subordination have been discharged, the beneficiary shall procure the discharge of the registration no later than ten calendar days after written demand by the subordinated party delivered to or received at the beneficiary's address stated in the registration.
4. The centralised functions of the International Registry shall be operated and administered by the Registrar on a twenty-four hour basis.
5. The Registrar shall be liable under Article 28 (1) of the Convention for loss caused up to an amount not exceeding the value of the railway rolling stock to which the loss relates.

Notwithstanding the preceding sentence, the liability of the Registrar shall not exceed 5 million Special Drawing Rights in any calendar year, or such greater amount, computed in such manner, as the Supervisory Authority may from time to time determine by regulations.

6. The preceding paragraph shall not limit the Registrar's liability for damages for loss caused by gross negligence or intentional misconduct of the Registrar and its officers and employees.
7. The amount of the insurance or financial guarantee referred to in Article 28(4) of the Convention shall be not less than the amount determined by the Supervisory Authority to be appropriate, having regard to the prospective liability of the Registrar.
8. Nothing in the Convention shall preclude the Registrar from procuring insurance or a financial guarantee covering events for which the Registrar is not liable under Article 28 of the Convention.

Article XVI — International Registry fees

1. The Supervisory Authority shall set and may from time to time amend the fees to be paid in connection with registrations, filings, searches and other services the International Registry may provide, in accordance with its regulations.
2. The fees referred to in the preceding paragraph shall be determined so as to recover, to the extent necessary, the reasonable costs of establishing, implementing and operating the International Registry, as well as the reasonable costs of the Secretariat associated with the performance of its functions. Nothing in this paragraph shall preclude the Registrar from operating for a reasonable profit.

Article XVII — Notices of sale

The regulations shall authorise the registration in the International Registry of notices of sale of railway rolling stock. The provisions of this Chapter and of Chapter V of the Convention shall, in so far as relevant, apply to these registrations. However, any such registration and any search made or certificate issued in respect of a notice of sale shall be for the purposes of information only and shall not affect the rights of any person, or have any other effect, under the Convention or this Protocol.

Chapter IV Jurisdiction

Article XVIII — Waivers of sovereign immunity

1. Subject to paragraph 2, a waiver of sovereign immunity from jurisdiction of the courts specified in Article 42 or Article 43 of the Convention or relating to enforcement of rights and interests relating to railway rolling stock under the Convention shall be binding and, if the other conditions to such jurisdiction or enforcement have been satisfied, shall be effective to confer jurisdiction and permit enforcement, as the case may be.
2. A waiver under the preceding paragraph must be in writing and contain a description of the railway rolling stock as specified in Article V(1) of this Protocol.

Chapter V Relationship with other Conventions

Article XIX — Relationship with the UNIDROIT Convention on International Financial Leasing

The Convention shall, to the extent of any inconsistency, prevail over the *UNIDROIT Convention on International Financial Leasing*, signed in Ottawa on 28 May 1988.

Article XX — Relationship with the Convention concerning International Carriage by Rail (COTIF)

The Convention shall, to the extent of any inconsistency, prevail over the *Convention concerning International Carriage by Rail (COTIF) of 9 May 1980 in the version of the Protocol of Modification of 3 June 1999*.

Chapter VI Final provisions

Article XXI — Signature, ratification, acceptance, approval or accession

1. This Protocol shall be open for signature in Luxembourg on 23 February 2007 by States participating in the diplomatic Conference to adopt a Rail Protocol to the Convention on International Interests in Mobile Equipment held at Luxembourg from 12 to 23 February 2007. After 23 February 2007 this Protocol shall be open to all States for signature at the

Headquarters of UNIDROIT in Rome until it enters into force in accordance with Article XXIII.

2. This Protocol shall be subject to ratification, acceptance or approval by States which have signed it.
3. Any State which does not sign this Protocol may accede to it at any time.
4. Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the Depositary.
5. A State may not become a Party to this Protocol unless it is or becomes also a Party to the Convention.

Article XXII — Regional Economic Integration Organisations

1. A Regional Economic Integration Organisation which is constituted by sovereign States and has competence over certain matters governed by this Protocol may similarly sign, accept, approve or accede to this Protocol. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that that Organisation has competence over matters governed by this Protocol. Where the number of Contracting States is relevant in this Protocol, the Regional Economic Integration Organisation shall not count as a Contracting State in addition to its Member States which are Contracting States.
2. The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, make a declaration to the Depositary specifying the matters governed by this Protocol in respect of which competence has been transferred to that Organisation by its Member States. The Regional Economic Integration Organisation shall promptly notify the Depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.
3. Any reference to a “Contracting State” or “Contracting States” or “State Party” or “States Parties” in this Protocol applies equally to a Regional Economic Integration Organisation where the context so requires.

Article XXIII — Entry into force

1. This Protocol enters into force between the States which have deposited instruments referred to in sub-paragraph (a) on the later of:
 - (a) the first day of the month following the expiration of three months after the date of the deposit of the fourth instrument of ratification, acceptance, approval or accession, and
 - (b) the date of the deposit by the Secretariat with the Depositary of a certificate confirming that the International Registry is fully operational.
2. For other States this Protocol enters into force on the first day of the month following the later of:
 - (a) the expiration of three months after the date of the deposit of its instrument of ratification, acceptance, approval or accession; and
 - (b) the date referred to in sub-paragraph (b) of the preceding paragraph.

Article XXIV — Territorial units

1. If a Contracting State has territorial units in which different systems of law are applicable in relation to the matters dealt with in this Protocol, it may, at the time of ratification, acceptance, approval or accession, declare that this Protocol is to extend to all its territorial units or only to one or more of them, and may modify its declaration by submitting another declaration at any time.
2. Any such declarations are to be notified to the Depositary and shall state expressly the territorial units to which this Protocol applies.
3. If a Contracting State has not made any declaration under paragraph 1, this Protocol shall apply to all territorial units of that State.
4. Where a Contracting State extends this Protocol to one or more of its territorial units, declarations permitted under this Protocol may be made in respect of each such territorial unit, and the declarations made in respect of one territorial unit may be different from those made in respect of another territorial unit.

5. If by virtue of a declaration under paragraph 1, this Protocol extends to one or more territorial units of a Contracting State:
- (a) the debtor is considered to be situated in a Contracting State only if it is incorporated or formed under a law in force in a territorial unit to which the Convention and this Protocol apply or if it has its registered office or statutory seat, centre of administration, place of business or habitual residence in a territorial unit to which the Convention and this Protocol apply;
 - (b) any reference to the location of the railway rolling stock in a Contracting State refers to the location of the railway rolling stock in a territorial unit to which the Convention and this Protocol apply; and
 - (c) any reference to the administrative authorities in that Contracting State shall be construed as referring to the administrative authorities having jurisdiction in a territorial unit to which the Convention and this Protocol apply.

Article XXV — Public service railway rolling stock

1. A Contracting State may, at any time, declare that it will continue to apply, to the extent specified in its declaration, rules of its law in force at that time which preclude, suspend or govern the exercise within its territory of any of the remedies specified in Chapter III of the Convention and Articles VII to IX of this Protocol in relation to railway rolling stock habitually used for the purpose of providing a service of public importance (“public service railway rolling stock”) as specified in that declaration notified to the Depositary.
2. Any person, including a governmental or other public authority, that, under rules of law of a Contracting State making a declaration under the preceding paragraph, exercises a power to take or procure possession, use or control of any public service railway rolling stock, shall preserve and maintain such railway rolling stock from the time of exercise of such power until possession, use or control is restored to the creditor.
3. During the period of time specified in the preceding paragraph, the person referred to in that

paragraph shall also make or procure payment to the creditor of an amount equal to the greater of:

- (a) such amount as that person shall be required to pay under the rules of law of the Contracting State making the declaration; and
- (b) the market lease rental in respect of such railway rolling stock.

The first such payment shall be made within ten calendar days of the date on which such power is exercised, and subsequent payments shall be made on the first day of each successive month thereafter. In the event that in any month the amount payable exceeds the amount due to the creditor from the debtor, the surplus shall be paid to any other creditors to the extent of their claims in the order of their priority and thereafter to the debtor.

4. A Contracting State whose rules of law do not provide for the obligations specified in paragraphs 2 and 3 may, to the extent specified in a separate declaration notified to the Depositary, declare that it will not apply those paragraphs with regard to railway rolling stock specified in that declaration. Nothing in this paragraph shall preclude a person from agreeing with the creditor to perform the obligations specified in paragraphs 2 or 3 or affect the enforceability of any agreement so concluded.
5. Any initial or subsequent declaration made under this Article by a Contracting State shall not adversely affect rights and interests of creditors arising under an agreement entered into prior to the date on which that declaration is received by the Depositary.
6. A Contracting State making a declaration under this Article shall take into consideration the protection of the interests of creditors and the effect of the declaration on the availability of credit.

Article XXVI — Transitional provisions

In relation to railway rolling stock Article 60 of the Convention shall be modified as follows:

- (a) in paragraph 2(a), after “situated” insert “at the time the right or interest is created or arises”;

(b) replace paragraph 3 with the following:

“3. A Contracting State may in its declaration under paragraph 1 specify a date, not earlier than three years and not later than ten years after the date on which the declaration becomes effective, when Articles 29, 35 and 36 of this Convention as modified or supplemented by the Protocol will become applicable, to the extent and in the manner specified in the declaration, to pre-existing rights or interests arising under an agreement made at a time when the debtor was situated in that State. Any priority of the right or interest under the law of that State, so far as applicable, shall continue if the right or interest is registered in the International Registry before the expiration of the period specified in the declaration, whether or not any other right or interest has previously been registered.”

Article XXVII — Declarations relating to certain provisions

1. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply either or both of Articles VI and X.
2. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply Article VIII, wholly or in part. If it so declares, it shall specify the time-period required by Article VIII(2).
3. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply the entirety of one of Alternatives A, B and C of Article IX and, if it so declares, it shall specify the type of insolvency proceeding, if any, to which it will apply such Alternative. A Contracting State making a declaration pursuant to this paragraph shall specify the time-period required by Article IX under paragraph 4 of Alternative A, paragraph 3 of Alternative B or paragraphs 5 and 15 of Alternative C, as applicable.
4. The courts of Contracting States shall apply Article IX in conformity with the declaration made by the Contracting State which is the primary insolvency jurisdiction.

Article XXVIII — Reservations and declarations

1. No reservations may be made to this Protocol but declarations authorised by Articles XIII, XIV, XXIV, XXV, XXVII, XXIX and XXX may be made in accordance with these provisions.
2. Any declaration or subsequent declaration or any withdrawal of a declaration made under this Protocol shall be notified in writing to the Depositary.

Article XXIX — Declarations under the Convention

1. Declarations made under the Convention, including those made under Articles 39, 40, 50, 53, 54, 55, 57, 58 and 60, shall be deemed to have also been made under this Protocol unless stated otherwise.
2. For the purposes of Article 50(1) of the Convention, an “internal transaction” shall also mean, in relation to railway rolling stock, a transaction of a type listed in Article 2(2)(a) to (c) of the Convention where the relevant railway rolling stock is only capable, in its normal course of use, of being operated on a single railway system within the Contracting State concerned, because of track gauge or other elements of the design of such railway rolling stock.

Article XXX — Subsequent declarations

1. A State Party may make a subsequent declaration, other than a declaration made in accordance with Article XXIX under Article 60 of the Convention, at any time after the date on which this Protocol has entered into force for it, by notifying the Depositary to that effect.
2. Any such subsequent declaration shall take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary. Where a longer period for that declaration to take effect is specified in the notification, it shall take effect upon the expiration of such longer period after receipt of the notification by the Depositary.
3. Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such subsequent declarations had been made, in respect of all rights and interests arising prior to the effective date of any such subsequent declaration.

Article XXXI — Withdrawal of declarations

1. Any State Party having made a declaration under this Protocol, other than a declaration made in accordance with Article XXIX under Article 60 of the Convention, may withdraw it at any time by notifying the Depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary.
2. Notwithstanding the preceding paragraph, this Protocol shall continue to apply, as if no such withdrawal had been made, in respect of all rights and interests arising prior to the effective date of any such withdrawal.

Article XXXII — Denunciations

1. Any State Party may denounce this Protocol by notification in writing to the Depositary.
2. Any such denunciation shall take effect on the first day of the month following the expiration of twelve months after the date of receipt of the notification by the Depositary.
3. Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such denunciation had been made, in respect of all rights and interests arising prior to the effective date of any such denunciation.

Article XXXIII — Review Conferences, amendments and related matters

1. The Depositary, in consultation with the Supervisory Authority, shall prepare reports yearly, or at such other time as the circumstances may require, for the States Parties as to the manner in which the international regime established in the Convention as amended by the Protocol has operated in practice. In preparing such reports, the Depositary shall take into account the reports of the Supervisory Authority concerning the functioning of the international registration system.
2. At the request of not less than twenty-five per cent of the States Parties, Review Conferences of the States Parties shall be convened from time to time by the Depositary, in consultation with the Supervisory Authority, to consider:

- (a) the practical operation of the Convention as amended by this Protocol and its effectiveness in facilitating the asset-based financing and leasing of the objects covered by its terms;
- (b) the judicial interpretation given to, and the application made of the terms of this Protocol and the regulations;
- (c) the functioning of the international registration system, the performance of the Registrar and its oversight by the Supervisory Authority, taking into account the reports of the Supervisory Authority; and
- (d) whether any modifications to this Protocol or the arrangements relating to the International Registry are desirable.

3. Any amendment to this Protocol shall be approved by at least a two-thirds majority of States Parties participating in the Conference referred to in the preceding paragraph and shall then enter into force in respect of States which have ratified, accepted or approved such amendment when it has been ratified, accepted or approved by four States in accordance with the provisions of Article XXIII relating to its entry into force.

Article XXXIV — Depositary and its functions

1. Instruments of ratification, acceptance, approval or accession shall be deposited with UNIDROIT, which is hereby designated the Depositary.
2. The Depositary shall:
 - (a) inform all Contracting States of:
 - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;
 - (ii) the date of the deposit of the certificate referred to in Article XXIII(1)(b);
 - (iii) the date of entry into force of this Protocol;

- (iv) each declaration made in accordance with this Protocol, together with the date thereof;
 - (v) the withdrawal or amendment of any declaration, together with the date thereof; and
 - (vi) the notification of any denunciation of this Protocol together with the date thereof and the date on which it takes effect;
- (b) transmit certified true copies of this Protocol to all Contracting States;
 - (c) provide the Supervisory Authority and the Registrar with a copy of each instrument of ratification, acceptance, approval or accession, together with the date of deposit thereof, of each declaration or withdrawal or amendment of a declaration and of each notification of denunciation, together with the date of notification thereof, so that the information contained therein is easily and fully available; and
 - (d) perform such other functions customary for depositaries.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorised, have signed this Protocol.

DONE at Luxembourg, this twenty-third day of February, two thousand and seven, in a single original in the English, French and German languages, all texts being equally authentic, such authenticity to take effect upon verification by the Secretariat of the Conference under the authority of the President of the Conference within ninety days hereof as to the consistency of the texts with one another.

Co-operation with International Organizations and Associations

Organization for Railways Cooperation (OSJD)

XXXVth Conference of Ministers

Warsaw, 26-29 June 2007

The Secretary General took part in OSJD's XXXVth Conference of Ministers in Warsaw. The hallmark of the Conference was the lively discussion on issues concerning the future status of the Organisation, the composition of staff in the Secretariat and financial matters. This indicates that the OSJD Member States are also giving consideration to how the Organisation and its working methods can be adapted to the restructured rail sector. In contrast to OTIF, within OSJD, the railway undertakings in the Conference of the Directors General and the Governments in the Conference of Ministers are both entrusted with important tasks and decision-making powers. Despite the increasing privatisation of railway undertakings in Europe and Asia and the resulting supervisory roles of the Governments, within OSJD, both areas are still combined, and have comparable opportunities to influence matters and take decisions. However, the Conference of Ministers has not yet taken any final decisions on these developments.

On the other hand, with its decision on the common CIM/SMGS consignment note, the Conference of Ministers indicated that the work on creating this consignment note, which was concluded in the middle of last year, is considered to be very useful and it accorded the follow-up work the importance it deserves, particularly with regard to clarifying questions concerning the law on liability, e.g. the presumption of the supposed place where loss or damage has occurred in the carriage of goods by rail, when this place can no longer be clearly established. Before the Conference of Ministers, the Secretary General of OTIF gave a speech entitled "Fields of action to safeguard the international competitiveness of the railways", which he will also make available in writing to the heads of delegation at the Conference of Ministers.

The Conference also took decisions on the Organisation's programme of work and the budgets for 2007 and 2008.

OSJD's XXXVIth Conference of Ministers will be held from 10-13 June 2008 in Kiev (Ukraine).
(Translation)

Case Law

Cour d'Appel de Douai

Ruling of 16 March 2006

The fact that a passenger does not lower or fold down the aerial on his vehicle handed over for carriage on the "car train" service, as prescribed in the conditions of transport ("passenger tariff"), does not relieve the carrier, which has entrusted the vehicle loading operation to a sub-contractor and which was itself responsible for carrying out a final check of the loading operation, from liability for the damage caused by the vehicle fire. According to the expert's report, the fire was attributable to an electric arc facilitated by the aerial's point effect, the short distance between the aerial and the catenary and the particular meteorological conditions.

Cf. Article L 133-1 of the French Commercial Code (Code de commerce)¹

...

In view of the provisionally enforced ruling of the Calais commercial court dated 18 June 2002, which:

- declared that the company, Renier, had not complied with its obligations and that SNCF had failed in its obligation to check the installations and in its obligation as the carrier,
- jointly ordered Renier and SNCF to pay, with interest at the legal rates to run from the date of the ruling:
 - HSBC Insurance Ltd the exchange value in euros of the sum of £ 8,250.-, the value of the vehicle that was destroyed, € 91.46 for the cost of towing the vehicle away, € 568.10 for the expert's expenses,

- the company C. the exchange value of the sum of € 250.- to cover the amount of the insurance excess,
- Mr N. the sum of € 2,134.86, the value of his personal effects,
- ordered Renier to compensate SNCF for half the losses suffered by Mr J. and Mrs K., which SNCF had settled.

In view of the appeal brought on 20 September 2002 by SNCF (EPIC²)

...

SNCF offers its users a "car train" service which is explained in chapter 14 of its "passenger tariff", which has statutory status to be defined in general terms and conditions approved and published by order No. 83/817 dated 13 September 1983, Article 17.

Chapter 14 of the "passenger tariff" contains all the information on the car train service. Article 2 of chapter 14 stipulates that the user must: "take all the necessary precautions to avoid damage, in particular ... lower aerials ...".

A guide is provided which sets out the precautions to be taken by the user before handing the vehicle over to SNCF upon arrival. The guide contains the following: "remove the radio aerial from your car or, failing this, secure it with string so that it cannot be raised".

Passengers are reminded of this rule on every ticket issued for transporting a vehicle: "it is the driver's responsibility to take all the necessary precautions to avoid damage ... remove the aerial, or if this is not possible, lower it or secure it firmly".

On 18 October 1996, SNCF arranged to sub-contract the vehicle loading and unloading operations at Nice station to Renier.

Under the terms of this agreement, it was specified that the contractor should: "help (the user) to remove or replace car roof racks or aerials ..." and that the contractor "must ... ensure when checks are being made before departure, that all precautions have been taken to avoid damage to the vehicle and to avoid incidents during the journey (... close sunroofs ... lower and immobilise aerials ...)".

¹ In an international transport operation, Article 36, in conjunction with Article 47 of CIV would be applicable.

² A public industrial and commercial enterprise

SNCF is required to do the following: “Once the work has been completed, the representative of SNCF shall, in the presence or not of the representative of the contractor, carry out a quantity and quality control of the operations performed; SNCF shall be solely responsible for assessing the quality of the work”.

“If loading or unloading operations have not been carried out or have only been carried out partially or defectively, the contractor shall be obliged to carry out the work that has not been done and to redo the work that has been done badly”.

On 30 May 1998, Mr N. used a vehicle belonging to his employer, the C. company, to make the journey by rail with SNCF from Nice to Calais. HSBC Insurance Ltd is the vehicle owner’s insurance company. During the journey, his vehicle was damaged by a fire which also damaged two adjacent vehicles.

The presiding judge of the Calais commercial court was asked to obtain an expert report. He appointed an expert by means of an order dated 12 June 1998. This expert report was extended to the Renier company.

The expert concluded that an electric arc had occurred between the raised aerial on Mr N.’s vehicle and the electrified catenary on the SNCF railway line.

The parties did not contest the cause of the fire identified by the expert.

In a document served by a process server dated 31 May 1999, SNCF summoned Renier in order to have the non-performance of its contractual obligations noted and to have the company ordered to pay all the sums that would be due to the users who were the victims of the fire. Mr N., the C. company, owner of the vehicle and the latter’s insurer, HSBC Insurance Ltd, entered into the proceedings.

The judge of first instance upheld the joint liability of SNCF and Renier on the grounds of non-fulfilment of its contractual obligations with regard to Renier and breach of its obligation to check its sub-contractor with regard to SNCF, which was also bound by an obligation to achieve a given result.

He ruled out any liability on the part of the English speaking user, Mr N., as he considered that the oversight of the latter, which was not the only contributing factor to the damage, was exonerative and that he was unable to understand the documents he had been given as they were written in French.

He rejected the limitations of compensation argued by SNCF on the grounds of incomplete documents that were not translated into English.

He therefore upheld the entire value of the C. company’s vehicle and compensated the loss of Mr N.’s personal effects.

He ordered Renier to pay SNCF half the sums paid to the two other users concerned.

As grounds for its appeal, SNCF recalled the statutory nature of its tariffs, which are approved by the Ministry of Transport, thus investing them with the character of an administrative order applicable to everybody and presumed to be known by everybody as the law or the regulations leading to a conclusive presumption of acquisitions, so that references to “passenger tariffs”, which are also referred to on the ticket and are written in French in compliance with law No. 94/665 of 4 August 1994, can be invoked in respect of users travelling on national territory, who are generally obliged to comply with national laws and regulations.

SNCF recalled that it can be relieved from the presumption of liability in Article L 133-1 of the Commercial Code by demonstrating the fault committed by the consignor; that Mr N. had handed over his vehicle without lowering the aerial even though it was up to him to do so under the terms of the obligations incumbent upon him in accordance with chapter 14 of the “passenger tariff”, which were reiterated on his ticket; that Renier had a contractual obligation to assist users in preparing their vehicles for transport and to ensure before departure that these steps had been taken; that although the agreement made with Renier specifies the existence of a final check by SNCF, this does not have the effect of relieving Renier from its responsibilities and that the effect of admitting the contrary would be always to relieve the latter from liability in the event of an incident.

SNCF asserts the contractual limitation of compensation, which in the case in point, fixes the sum due for the vehicle at € 10,671.43, and the absence of compensation for personal effects.

Renier confirms that by dint of its statutory nature, SNCF’s tariff applies to all users; that Mr N. did not comply with the obligations imposed on him by the documents he was given, which consisted of basic precautions along the lines of those used when cleaning a vehicle, i.e. to close the sunroof, lower aerials, not remain in the vehicle ...; that SNCF, in the agreement it made with Renier, stipulated that it would be the sole

judge of the work carried out and that it had not checked the work or that it had at least considered that the work was in order, so that the liability of the sub-contractor can no longer be put in issue; that in addition, the contractual limitation of compensation of the damage should be applied.

Mr N., the C. company and HSBC Insurance Ltd, the insurer subrogated to all rights of the C. company, the owner of the vehicle explain that SNCF has an obligation to achieve a given result with regard to users and that it failed in its obligation to check the vehicle loading work carried out by Renier, that Renier failed in its obligations by omitting to check, when the vehicles were being loaded, that the users had taken the necessary precautions.

They contest the statutory nature of the “passenger tariff” and argue that it is not opposable to Mr N.; that the latter did not load his vehicle onto the train, as this operation was carried out by Renier, which had to ensure that the aerial on the vehicle was lowered, and SNCF was supposed to check that this had been done.

They assert that Mr N., an English speaker, was not able to have any knowledge of the recommendations made in the “car train guide”, which was written in French; that Article 11 of SNCF’s general operating conditions requires the company to provide passengers with all useful information in a precise and accessible manner by disseminating such information as widely as possible; that SNCF should have been able to provide documents in English for this service, which is used by a great many English people; that consequently also, no limitation or exclusion of compensation is opposable to them.

In addition, in the event that this “passenger tariff” were to be opposable to them, they suggest that Mr N.’s fault is not the sole cause of the damage, which thus prevents SNCF from relieving itself from its obligation to achieve a given result by virtue of Article L 133-1 of the Commercial Code.

With regard to the limitation of compensation, they note that SNCF does not demonstrate that it has produced the relevant contractual document or that it has communicated it.

They recall that Renier, a third party to the contract made between the user and SNCF, cannot invoke against them the contractual limitations of liability of which SNCF avails itself.

Whereupon:

1) With regard to the legal requirements applicable to the case

By virtue of Articles 2 and 5 of law No. 94/665 of 4 August 1994, amended on 2 July 1996, the contractual documents drawn up between a legal person governed by public law or a private person carrying out a public service commission are written in French and a user of EPIC SNCF cannot argue the non-opposability of a contractual document on the grounds of its being written in French.

Decree No. 83/817 of 13 September 1983, as amended, approves SNCF’s general operating conditions and, in Article 17 thereof, the conditions of approval of its tariffs, i.e. the tacit approval of the Ministry within 8 days of their being deposited followed by publication for users six days before they enter into force.

These tariffs include in particular information on the car train service, including the material conditions for handing the vehicle over for embarkation, with the precautions to be taken by the user, the prices, the amounts to be reimbursed in the event of an incident, the exclusion of luggage left in cars ...

They are therefore given a statutory status which confers upon them the character of mandatory rules in respect of users, but without modifying the contractual nature of private law affecting the legal relationship linking the user and SNCF.

Article 11 of the decree dated 13 September 1983 creates an obligation for SNCF to provide the user with information; SNCF must communicate to the user in a precise and accessible manner all the information that is necessary on ... the general operating conditions of services and the complementary services that are provided. This obligation was met by providing the user with the instructions given on the ticket and the brochure for the car train tariff, in addition to their being published as set out in the previous paragraph.

2) With regard to liabilities

SNCF, which is subject to common law on land transport, has an obligation to achieve a given result in its capacity of carrier and can only relieve itself of its presumption of liability in the event of force majeure, inherent defect or fault on the part of the user.

In this case, as the cause of the fire is not disputed, it appears that the user did not comply with the

instructions by not lowering the aerial; that Renier, which was tasked with loading the vehicles and checking that they conformed to the conditions of carriage failed in its duty; that SNCF did not check the work carried out by its sub-contractor.

While the user is asked to take certain “precautions necessary in order to avoid damage ...”, the fact that SNCF, a transport specialist, takes charge of the vehicle from the parking area and drives it to be placed on the wagon platform implies on its part, in connection with its obligation to achieve a given result, that SNCF should check that the material conditions of carriage have been met and at the same time check that the precautionary measures to be taken by the user have been carried out correctly and to help in carrying them out if need be.

It follows that the carrier cannot even partially be relieved from his obligation to achieve a given result by arguing fault on the part of the user, whose liability will therefore be set aside.

SNCF is therefore liable for the damage caused to the user while the vehicle was being carried, but within the contractual limitation of compensation specified in the tariff. SNCF has recourse against the sub-contractor Renier, who was assigned the task of taking charge of the vehicles and embarking them in accordance with a contract specifying the checking that was necessary in respect of the measures to be taken before embarkation, one of which was to lower the aerials.

While SNCF specifies in the sub-contract that it carries out “a quantity and quality control of the operations performed ... once the work has been completed” in order to be “solely responsible for assessing the quality of the work”, with a reminder that SNCF is able to require Renier to “redo the work that has been done badly or carry out the work that has not been done”, this stipulation is only ever the expression of the competence to carry out checks during execution of the contract, which is naturally available to any prime contractor in respect of its sub-contractor, though the sub-contractor cannot use it to avoid liability completely. However, the wording of this clause is unambiguous in that it requires SNCF to carry out checks, not by spot checks in time or place, but for each embarkation, which establishes a share of liability for the prime contractor that the court estimates at 50%, so SNCF will have recourse against Renier for half the amounts SNCF will be required to pay.

3) With regard to the loss suffered by the passenger

Like any carrier, SNCF has the authority to fix compensation limits contractually in the event of damage, loss or delay, on the basis of various criteria. Compensation can only be obtained for everything that has been covered in the contract; it could not be extended to cover what was not in the contract of carriage and of which it was unaware, such as luggage contained in the vehicle being carried, a restriction on compensation that is specified in the car train tariff that is given to the user.

In this case, the compensation limit for a vehicle is set contractually at 70,000.- Francs, i.e. € 10,671.43, so the insurance company and the C. company will be indemnified within this maximum amount in proportion to their respective claims, valued in euros on the day of payment for sums expressed in pounds sterling.

4) With regard to the loss suffered by SNCF

While SNCF is claiming compensation of the sums of € 176.84, £ 1021.12, £ 676.45, £ 82 and £ 37 relating respectively to the cleaning of the wagon, reimbursement of the compensation for two vehicles belonging to Mr J. and Mrs K. that were next to the fire-damaged vehicle, and to the partial reimbursement of train tickets, it cannot ask Renier, who is jointly liable, for compensation for personal loss resulting from a fault of which SNCF is itself partly the origin.

On these grounds

The court, in the last instance, in a public ruling handed down after hearing both parties and placed in the records office,

upholds the ruling of the Calais commercial court dated 18 June 2002 in that it declared that Renier did not fulfil its obligations and that SNCF failed in its obligation to check the installations and in its obligation as a carrier.

Otherwise reverses the ruling:

orders SNCF to pay HSBC Insurance Ltd. and the C. company together and in proportion to their respective claims as specified in the deferred ruling the single sum of € 10,671.43 with interest at the legal rate to run from 18 June 2002.

Dismisses Mr N.'s principal claim.

Dismisses SNCF's claim for reimbursement of its own losses.

Orders Renier to compensate SNCF for half the amounts it has been ordered to pay.

(Direct communication)

(Translation)

Book Reviews

Alter Michel, Franck Turgné (volume update) *Transport terrestre, Responsabilité du transporteur international de voyageurs et de bagages* (Land Transport, Liability of the International Carrier of Passengers and Luggage), LexisNexis JurisClasseur Civil liability and insurance, volume 470-40 (1,2007 – up to date as at 10.11.2006)

In this volume, the authors analyse and comment in detail on the international land carrier's liability in respect of the consolidated international "Conventions" which, for international rail transport, are the Uniform Rules concerning the Contract of International Carriage of Passengers by Rail (CIV UR – Appendix A to COTIF) and for international road transport, the Convention on the Contract for the International Carriage of Passengers and Luggage by Road (CVR).

The study of international legislation focuses mainly on the provisions of the CIV UR, because at the moment, there is still a long way to go to achieve unity with regard to issues affecting road transport. In fact, only a very small number of countries (6 in total) have adopted CVR, which entered into force on 12 April 1994.

In their introduction, the authors rightly underline the importance that still attaches to national law and the rules on the conflict of legal provisions in terms of the international carriage of passengers (and luggage) by land transport, even though for the CIV UR, establishing the national law that applies is a subsidiary matter, with a view to supplementing the CIV UR. In this respect, they note that contrary to the 1980 CIV UR (Article 8), the 1999 CIV UR no longer contain a provision on national law which, in itself, is correct. However, the international legislation that applies to the carriage of passengers by rail, in the same way as the legislation that applies to the carriage of goods by rail, is not silent on "what is understood by national law". In fact, the provisions on national law have been transferred from the 1980 CIV and CIM UR to COTIF 1999 (Article 8). In addition, in case of death of, or personal injury to

passengers, the *lex loci delicti commissi* applicable under the regime of the 1980 CIV UR has been replaced by the *lex fori* (including the rules on the conflict of legal provisions).

The volume is structured in five parts dealing with liability in case of death of, or personal injury to passengers, liability for material damage (damage caused to hand luggage and animals, registered luggage and vehicles) and failure to keep to the timetable, common provisions (loss of rights to invoke the limits of liability, conversion of and interest on compensation, nuclear incidents, persons for whom the carrier is liable and other actions), the assertion of rights and carriers' recourse action.

Throughout the study, the authors compare and establish parallels between the 1980 CIV UR and the 1999 CIV UR on the one hand and between the CIV UR and the CIM UR on the other. The literature and case law¹ are also well represented in this volume.

With its clear presentation, the commentary on the provisions examined, as usual in LexisNexis JurisClasseur, is preceded by key points, an analytical summary and an alphabetical index. The volume updated by Mr Turgné only serves to reinforce the reputation of this collection, which is an indispensable tool for legal professionals.

(Translation)

¹ With regard to the carrier's liability for motor vehicles (national law), see the ruling of 16 March 2006 handed down by the Cour d'Appel de Douai, published in the section on "Case Law".