Legal consequences of the entry into force of COTIF 1999 if not all States have ratified the Vilnius Protocol in due time
I.

In consideration of the fact that on the one hand, the 1999 Protocol will probably enter into force before all the Member States of OTIF have ratified, accepted or approved it or have acceded to it,

in consideration of the fact that on the other hand, the 1999 revision was carried out by the 5th General Assembly in Vilnius, ensuring legal continuity on the basis of Article 20 of COTIF 1980 and that those States that have not ratified, accepted or approved the 1999 Protocol or have not acceded to it also continue to be Member States of OTIF,

further, in consideration of the fact that 33 Member States have signed the 1999 Protocol, four Member States have acceded to this Protocol and two other States have acceded to COTIF since 1999 – including the 1999 version,

considering the general principle under international law of utmost good faith (*bona fides*),

considering the general principle under international law, according to which signing the new version of the Convention obliges the signatory State to refrain from acts which would defeat the object and purpose of the treaty and

considering further principles under international law established in the Vienna Convention on the Law of Treaties (e.g. Art. 30 and 34),

in the interest of the smoothest possible application of the new rules, while ensuring Member States' existing rights,

the General Assembly deems that

- the Member States that have not ratified, accepted or approved the 1999 Protocol or have not acceded to it, are to be considered as third countries in relation to the 1999 Protocol,
- but the existence of the organs in accordance with COTIF 1980 and COTIF 1999 in parallel is not acceptable, since it is not practicable,
- there are thus only uniform organs of OTIF, although it must be assumed that the right to vote can only be granted to States that have not ratified, accepted or approved the 1999 Protocol or have not acceded to it to the extent that the discussions in these organs concern provisions that it would be possible to amend on the basis of the enabling power in accordance with COTIF 1980; in particular, this means
  - only one General Assembly, in which those Member States that have not ratified, accepted or approved COTIF 1999 or have not acceded to it may also exercise their right to vote, provided this is consistent with the rights and obligations they have in accordance with COTIF 1980, without defeating the purpose of COTIF 1999;
  - only one Administrative Committee consisting of one third of the Member States, which however, in its decisions, particularly on financial
matters, must take account of the interests of the Member States that have not (yet) ratified, accepted or approved the 1999 Vilnius Protocol or have not acceded to it, in accordance with the principles under international law that have been referred to;

- only one Revision Committee, in which the States that have not ratified, accepted or approved the 1999 Protocol or have not acceded to it do not have the right to vote in decisions concerning amendments to COTIF 1999, while the Revision Committee should refrain from making amendments to COTIF 1980;

- only one RID Committee of Experts, in which all Member States are entitled to develop further the Annex to RID, while those States that have not ratified, accepted or approved the 1999 Protocol or have not acceded to it do not have the right to vote in decisions concerning amendments to Appendix C itself;

- a new organ, the Committee of Technical Experts, in which the Member States that have not ratified, accepted or approved the 1999 Protocol or have not acceded to it do not have the right to vote;

  - the European Community cannot exercise such rights in the organs of OTIF as are not granted to the Member States concerned because they have not ratified, accepted or approved the 1999 Protocol or have not acceded to it,

  - in contrast, the European Community can exercise its Member States’ right to vote in such matters, under the conditions applicable in this respect, where such States could have the right to vote, even though they have not yet ratified, accepted or approved the 1999 Protocol or have not acceded to it,

the General Assembly requests the Secretary General,

not only to keep the Lists of Lines prescribed in Article 24 of COTIF 1999 up to date and to publish them, but also – for those States that have not ratified, accepted or approved the 1999 Protocol or have not acceded to it – to continue to keep the Lists of Lines in accordance with Article 10 of COTIF 1980 up to date, in view of Article 11 of COTIF 1980, and to publish them.

II.

In consideration of the fact that application of the CIV and CIM Uniform Rules, and hence of RID as an executive order in respect of Article 4 (d) and Article 5 § 1 (a) of CIM 1980, is suspended when the 1999 Protocol enters into force, in accordance with Article 20 § 3 of COTIF 1980, in respect of traffic with and between those Member States which, one month before the entry into force of the 1999 Protocol have not yet deposited their instruments of ratification, acceptance, approval or accession,

Conscious that application of the CIV Uniform Rules on the basis of an agreement between the parties to the contract of carriage is not provided for in the 1999 CIV UR, in contrast to the 1999 CIM UR,
Conscious that the public law provisions of the Regulation concerning the International Carriage of Dangerous Goods by Rail (RID – Appendix C to COTIF 1999) are not subject to disposal by the parties,

the General Assembly recommends the Member States concerned

to use suitable measures to make the existing possibilities available to the parties to the contract of carriage, in order to prevent the negative consequences of the suspension of the application of the CIM and CIV Uniform Rules, by

– making use of the possibility of applying the 1999 CIM Uniform Rules to the international carriage of goods by choice of law in accordance with Article 1 § 2 of CIM 1999, and

– choosing the 1999 CIV Uniform Rules as contract law on the basis of international private law for the international carriage of passengers, provided the respective national law so permits.

In addition, with regard to the international carriage of dangerous goods, the General Assembly recommends that the Member States to whom the provisions of RID do not apply on the basis of the European Communities’ RID Framework Directive should check, bearing in mind their national law, the extent to which the provisions of RID should be applied, given that these provisions reflect the current state of science and technology and thus define the degree of care required.