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

Explanatory Report

- **General Points**
- **Background**
- **Preparatory work**
- **Principles of the reform**
- **Miscellaneous**
- **Result**

- **In particular**

Explanatory Report [6]

General Points

Background

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

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

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

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

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

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

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

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

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

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

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

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

Preparatory work

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

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

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

14. In considering an in-depth revision of COTIF, it must be remembered that the circle of Member States of OTIF is much more widespread that that of the Member States of the EC. This is why, before addressing the revision work proper, the Central Office endeavoured to familiarise itself with the position of the Member States of OTIF with regard to a range of questions of principle. The above-mentioned ad hoc Committee noted a list of questions prepared by the Central Office and supplemented these with some additional topics. In its circular letter of 3 January 1994, the Central Office requested the States and the interested international organisations and associations, as well as companies wishing to set out their own opinion by way of supplement and independently of the position of the International Rail Transport Committee (CIT), to submit their responses to the Central Office in writing.

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

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

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

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

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

Principles of the reform

Harmonisation

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

Scope

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

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

Contract of carriage

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

Obligation to carry, obligation to establish tariffs

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

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

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

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

Subsequent carriers

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

Liability

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

Contractual freedom

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

Miscellaneous

Common provisions

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

Prohibition on transporting

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

Special provisions for certain types of transport

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

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

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

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

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

Agreements

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

Result

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

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

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

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

- derogation from the mandatory nature of CIM Uniform Rules for the two parties to the contract, in return for a regulation allowing the carrier to extend his liability and obligations (Article 5, last sentence)
- determination of the principal obligations of the carrier (article 6, § 1)
- more severe liability than that provided for in Article 11, Parag. 3 of the CMR, in the case of loss or misuse of documents attached to the consignment note (Article 15, § 3)
- retention of higher maximum compensation amounts (Articles 30 and 33)
- substitute carrier (Article 27)
- modern formulation of qualified fault (Article 36)
- description of the infrastructure manager as an auxiliary (Article 40)
- electronic consignment notes and replacement of the signature (Article 6)
- no refund of excise duties in connection with goods carried under the suspension of such duties (Article 30)
- liability in rail-sea traffic (Article 38)

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

In particular

Title I

General Points

Article 1
Scope

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28. In the rewording, only the words "at the time of deposition of the instrument of accession" were retained since, for the States which come into consideration, the only possibility is accession to COTIF. According to Article 5 of the Amendment Protocol 1999, such a reservation can also be issued at any time, in accordance with the Amendment Protocol, by a State which acceded to COTIF before the amended version came into force. According to Article 42, § 2 of COTIF, such a reservation becomes effective upon the entry into force of the Amendment Protocol.

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

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

Article 2
Prescriptions of public law

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

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

Article 3
Definitions

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

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

3. The Fifth General Assembly supplemented the definition of "substitute carrier" decided on by the Revision Committee, by inserting the words "the performance of the carriage by rail" (Report, p. 69). This avoids the situation whereby, as a result of this definition, road transport companies undertaking initial or final carriage which complements carriage by rail are considered as substitute carriers in the sense of Article 27, the latter being independently liable and being liable to lawsuit in accordance with Article 45, § 6. On the contrary, such road transport companies are auxiliaries in the sense of Article 40.

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

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

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

Article 4
Derogations

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

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

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

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

Article 5
Mandatory law

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

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

Title II
Conclusion and Performance of the Contract of Carriage

Article 6
Contract of carriage

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

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

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

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

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

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

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

8. Following the example of Article 4 of the CMR, the Central Office draft of May 1995 had not proposed the use of a uniform consignment note model. In the opinion of the Central Office, that would not have prevented the railways from devising such a uniform model within the framework of one of their international associations. In order to take account of the simplified Community/Common customs transit procedure of the EC/EFTA, which must be maintained at all costs, the Revision Committee thus decided to stipulate the use of a uniform consignment note model (Report on the Fourth Session, p. 3 and Annex 1). The

Revision Committee had at first made provision whereby it would be the responsibility of OTIF or its Secretariat to draw up model consignment notes (Report on the Third Session, pp 17-28). That would also have corresponded to the approach of the European Commission, according to which model consignment notes were to constitute an annex to the CIM Uniform Rules.

9. For practical reasons, however, and also in the interest of increased flexibility, the Revision Committee decided, in its sixteenth session, to leave the responsibility for drawing up "uniform model consignment notes" to the international carrier's associations (§ 8) (Report on the Sixteenth Session, pp 17-21). These associations must come to agreement with the customers' associations and the authorities which are competent in customs matters, including the EC departments with responsibility for customs questions. In this context, "agreement" does not mean a formal procedure of approval or acceptance. The customs authorities, however, are free at any time to reject model consignment notes as customs documents. The taking into account of clients' wishes is in the direct interest of the rail transport companies.

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

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

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

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

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

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

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

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

Article 7
Wording of the consignment note

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

2. According to § 1, letter a), the consignment note must include the place and the date of its making-out and, according to § 1, letter f), the place of delivery, whereas currently it is necessary to indicate in the consignment note the forwarding station (Article 11, § 1 CIM 1980) and the station of destination (Article 13, § 1, letter a) CIM 1980). The new wording allows more precise information when the goods are remitted for transportation or delivered

on connecting routes. This enables a regulation corresponding to Article 28, § 3 of the CIM Uniform Rules 1980 to be omitted from Article 17 (delivery) (Report on the Sixth Session, p. 4).

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

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

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

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

Article 8
Responsibility for particulars entered on the consignment note

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

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

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

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

Article 9
Dangerous goods

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

Article 10
Payment of costs

1. If there is no provision for an obligation to carry, it seems logical that the responsibility for agreeing the payment of costs should also be left to the consignor and the carrier. An obligation on the part of the railway to grant payment periods and to accept that the costs be charged to the consignee, who perhaps will not offer the same payment guarantees as the consignor, is meaningful only in connection with the obligation to carry. For this reason, Article 10 replaces Article 15 of the CIM Uniform Rules 1980. The consignor's obligation to pay is regulated only as a subsidiary matter.

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

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

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

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

Article 11
Examination

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

2. The wording "two witnesses not connected with railways" (Article 21, § 2 CIM 1980) has been replaced by "two independent witnesses". These witnesses are to be called upon only in the absence of other provisions in the laws and regulations of the State in which the examination is conducted. In the course of the deliberations, it was clarified that the

recourse to witnesses must not complicate the situation of the carrier from the point of view of obligations under public law, particularly the obligations concerning safety of operation (Report on the Fourth Session, p. 5). The obligation to call upon witnesses is limited to examination of the contents (Report on the Sixteenth Session, p. 38).

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

a) the apparent condition of the goods and its packaging
b) the number of packages, their marks and numbers
c) the gross mass or quantity otherwise expressed.

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

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

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

a) the number of packages, their marks and numbers
b) the gross mass or the quantity otherwise expressed

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

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

Article 12
Evidential value of the consignment note

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

   a) the conclusion and contents of the contract of carriage
   b) the taking over of the goods by the carrier, and
   c) the apparent good condition of the goods and their packaging.

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

   a) the number of packages, their marks and numbers
   b) the gross mass or the quantity otherwise expressed.

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

   a) the number of packages, their marks and numbers
   b) the gross mass or the quantity otherwise expressed

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

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

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

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

Article 13
Loading and unloading of the goods

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

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

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

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

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

Article 14
Packing

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

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

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

Article 15
Completion of administrative formalities

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

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

Article 16
Transit periods

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

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

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

4. Article 33, § 6 allows provision for other methods of compensation when the transit period has been agreed in accordance with Article 17, § 1. Such a provision does appear useful, despite the fact that the new provision concerning the mandatory nature of the CIM Uniform Rules (Article 5) provides for the possibility for the carrier to extend his liability and obligations. It not only dispenses with the investigation of the extent to which such a dispensatory regulation in respect of indemnity actually constitutes an extension of liability, but it also allows limitation of the liability. Such limitations of liability can be in the interest

of both parties to the contract of carriage when, for example, the limitation is linked to methods which permit an accelerated settlement of the damage, as is the case in respect of a conventional fine without proof of damage.

Article 17
Delivery

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

2. A proposal by which the consignee would be obliged to pay "the charges shown to be due on the *consignment note*" (Article 13, Parag, 2 CMR) instead of "amounts due according to the *contract of carriage*" was rejected (Report on the Fourth Session, p. 22). In rail transport practice, the consignment note does not contain all the debts in respect of the consignee. In the case of incorrect information written on the consignment note, according to the opinion of the Revision Committee, it ought to be possible, using other means of proof, to enforce a claim against the consignee in respect of a debt which is not of an identical amount to that written on the consignment note. Since as far back as the 1952 revision, the extent of the consignee's debt in international carriage by rail has not been based on the consignment note.

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

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

Article 18
Right to dispose of the goods

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

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

3. The Fifth General Assembly rejected the solution which the Revision Committee had adopted by analogy with Article 12, Parag. 3 of the CMR, according to which the consignee is only entitled to amend the contract of carriage from the point at which the consignment note is made out if the consignor has entered a statement to that effect on the consignment note (Report, p. 69/70). Following the example of Article 31, § 1 of the CIM Uniform Rules 1980, the consignee will therefore have this right unless the consignor has included an indication to the contrary. Despite having thus inverted the principle adopted by the Revision Committee, the General Assembly did not make other textual changes. A "race" can thus develop between the consignor (§ 1) and the consignee (§ 3), in which the consignor is in a stronger position as long as he has disposal of the consignment note. Amendments must be written on the consignment note and the duplicate must be presented to the carrier (Article 19, § 1).

Article 19
Exercise of the right to dispose of the goods

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

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

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

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

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

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

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

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

Article 20
Circumstances preventing carriage

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

Article 21
Circumstances preventing delivery

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

Article 22
Consequences of circumstances preventing carriage and delivery

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

2. According to Article 16, Parag. 4 of the CMR, the proceeds of the sale must be put at the disposal of the rightful beneficiary, i.e., this is a debt which is payable at the address of the

payee and not, as hitherto the case in accordance with Article 33, § 6, indent 2 and Article 34, § 5, indent 2 of the CIM Uniform Rules 1980, a debt which is payable upon summons.

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

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

Titre III
Liability

Article 23
Basis of liability

1. Hitherto, in international carriage, any railway which had accepted goods for transport could only carry those goods on the route belonging to its network.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 25
Burden of proof

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

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

Article 26
Successive carriers

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

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

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

Article 27
Substitute carrier

1. The Central Office draft of May 1995 had not regulated the liability of the "substitute carrier" ("sub-contracting carrier"). With regard to the reasons, see Nos. 2 and 3 of the remarks relating to Article 25 (Annex 2 to the circular letter of 5.5.1995; 1995 Bulletin, p. 142). The Revision Committee, however, decided by a clear majority to regulate this institution which is known in air and maritime transport (Report on the Fourth Session, p. 36). The text which was adopted essentially follows Article 10 of the Hamburg Rules. The "substitute carrier" is answerable only in respect of the carriage performed by him (partial route) whereas the subsequent carriers are answerable in respect of the carriage over the entire route.

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

Article 28
Presumption of loss or damage in case of reconsignment

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

Article 29
Presumption of loss of the goods

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

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

Article 30
Compensation for loss

1. This provision corresponds to Article 40 of the CIM Uniform Rules 1980. In consideration of the loss in value of the Special Drawing Right (SDR) since 1980, the Revision Committee decided, in principle, to increase the compensation per missing kilogram of gross mass, without setting a precise amount for the time being. It has instructed the Central Office to prepare a document for the information of the General Assembly which is to indicate the determining criteria for the value of the SDR (Report on the Sixth Session, p. 20). The Committee was perfectly aware of the fact that the limit amounts for other modes of transport are significantly lower than those provided in rail transport law. It nevertheless considered that that represented a competitive advantage of rail as a mode of transport (Report on the Sixth Session, p. 19).

2. From data available to the Central Office, it proved necessary to assume a loss of approximately 65% in the real value of the SDR for the period from May 1980 to January 1999. Even a 50% increase in the limit amount only corresponds to an amount (25.5 SDR) which represents approximately three times the maximum amount of liability of the CMR (8.33 SDR). The Central Office suggestion to set the maximum amount of liability at 25 SDR was taken up by Lithuania, since an increase of the limit amount would have led to an alignment with the SMGS, which does not provide for maximum amounts of liability. After the CIT representative declared that the rail transport companies had no objection to an increase not exceeding the loss in real value of the DTS, the Fifth General Assembly adopted this proposal by Lithuania with the necessary two-thirds majority (no votes against, 9 abstentions; Report, p. 75).

3. The General Assembly initially rejected a proposal, submitted by Spain, to resume the discussion (Report, p. 76). On the other hand, a second proposal for resumption, submitted before the final vote, was adopted. Upon proposal by Spain, supported by Belgium and Bulgaria, the Fifth General Assembly then decided with the necessary two-thirds majority (20 votes in favour, 4 votes against and 4 abstentions) to retain the maximum liability amount of 17 SDR (Report, pp 75-79). By this decision, the Fifth General Assembly supported the following arguments:

- It is appropriate to differentiate between the adaptation of the maximum liability amounts in goods traffic and that in passenger traffic. Full compensation of the loss of real value is justifiable in the area of passenger traffic, but not in that of goods traffic.
- In view of the economic differences in the Member States of the Organisation, an increase in the maximum liability amount is unacceptable for the railways of certain States.
- For the rail companies, an increase in the maximum liability amount to three times that applicable in international road traffic would result in a deterioration of competitive conditions. As a general rule, the consignor insures his goods against damage caused during carriage. This would involve double insurance as well as an increase in insurance premiums. Due to the insurance cover, the market does not honour an increase in the maximum amounts of liability.
- The maximum amount of liability, of 17 SDR, was also retained in May 1999 in the revision of the Warsaw Convention.
- Within the framework of the reform of the transport law in Germany, the maximum amounts of liability have also been harmonised to the level of the amounts applicable in road transport law.

4. On the other hand, the Fifth General Assembly did not accept the following arguments:

- The carrier must be answerable for damage caused, if only to safeguard his good reputation.
- Limit amounts of liability which are higher than in carriage by road could represent a competitive advantage of rail.
- It is not a matter of increasing the maximum amounts of liability, but only of compensating, at least partially, the loss of real value that has occurred.
- In the determination of the maximum amount of liability within the framework of the revision of the Warsaw Convention, provision was made to adapt the amount to the loss of real value automatically, every five years, which will not be the case according to the CIM Uniform Rules.

5. In its sixteenth session, the Revision Committee had introduced §3, in order to apply, in respect of compensation in case of loss in these special cases, the same principles as those applicable in accordance with Article 4 of the CUV Uniform Rules (cf. also Article 12, § 2; Report on the Sixteenth Session, p. 71). Furthermore, in the twentieth session, the Revision Committee had extended this provision to intermodal transport units (cf. Article 14 RICo; Report on the Twentieth Session, Third Meeting, p. 13/14). In its twenty-second session (1 – 4.2.1999), the Revision Committee supplemented § 3, since, in the case of loss of a vehicle,

the date or place of the loss is not always known. In such a case, the usual value on the date and at the place of taking over is determinant.

6. The wording of § 4 was amended to clarify the relation with carriage as a condition for the obligation of restitution (Report on the Sixth Session, p. 20/21). With regard to the restitution of customs duties and excise duties, the result of the discussions within the Revision Committee was that the excise duties arising from the loss of goods (e.g. in the case of theft) would also have to be refunded provided that they were "already settled". It would then be a matter of restitution of indirect damage (Report on the Sixteenth Session, p. 80; Report on the Twentieth Session, Third Meeting, p. 14).

7. The Fifth General Assembly returned to the problem of excise duties, the restitution of which it wished to exclude expressly in the context of Article 30, § 4. It is proper to make a distinction between customs duties and excise duties. In customs procedure, rail companies involved in carriage have the status of "obliged principal" and are thus jointly and severally liable with the consignor or the consignee in respect of the customs authorities. In the case of irregularity or infringement, they are obliged to pay customs duties. They are therefore obliged to refund them, after the example of the carriage charge. Excise duties, on the other hand, relate to goods which, in the EC for example, come within a specific fiscal statute. They can only be produced, processed, held and consigned by "approved bonders". These bonders are obliged to furnish an "obligatory guarantee" to allow these goods to circulate between such fiscal warehouses. In terms of excise, the rail carrier does not have the status of "obliged principal" in respect of the fiscal authorities. The wording decided upon by the Fifth General Assembly is thus intended to exclude the obligation to refund such excise duties, this restitution having been considered to be indirect compensatory damages (Report, pp 79-84 and 181/182).

Article 31
Liability for wastage in transit

This provision corresponds to Article 41 of the CIM Uniform Rules 1980, in the version of 1 January 1991. It is a *lex specialis* of Article 23, which has its basis in the nature of the goods carried as well as in the duration of certain carriage (Report on the Sixth Session, p. 22 ; Report on the Sixteenth Session, p. 81/82).

Article 32
Compensation for damage

This provision corresponds to Article 42 of the CIM 1980. The special provision of § 3 in the case of damage to a railway vehicle running on its own wheels and consigned as goods was introduced in the sixteenth session of the Revision Committee. Instead of the depreciation, it is the costs of repair, excluding any other damages, which must be paid (Report on the Sixteenth Session, p. 83). In its twentieth session, the Revision Committee extended this provision to intermodal transport units and their parts (Report on the Twentieth Session, Third Meeting, p. 15 ; see also Article 14 RICo).

Article 33
Compensation for exceeding the transit period

1. This provision corresponds to Article 43 of the CIM Uniform Rules 1980, in the terms of the 1990 Protocol. The Revision Committee voluntarily retained a maximum amount of compensation which is much higher that that provided for in Article 23, Parag. 5 of the CMR (*four times* the carriage charge instead of the *single* carriage charge !) (Report on the Twentieth Session, Third Meeting, p. 15/16).

2. The drafting of § 6 has been improved. If the transit periods as provided for in Article 16 are exceeded, the rightful claimant may choose between the agreed compensation and that provided in accordance with §§ 1 to 5.

3. See also No. 4 of the remarks relating to Article 16.

4. Article 33 is also applicable with regard to compensation in case of exceeding of the transit period for railway vehicles running on their own wheels and consigned as goods.

Article 34
Compensation in case of declaration of value

1. The provisions concerning declaration of value have been taken from Article 24 of the CMR, with the exception of the disputed text concerning the payment of a price supplement, to be agreed (Report on the Sixth Session, p. 28; Report on the Twentieth Session, Third Meeting, p. 16/17). The parties to the contract can agree the payment of a price supplement.

2. Contrary to the case with regard to declaration of interest upon delivery, the only amount due is the amount of proven damage, according to the value of the lost or damaged goods at the place and at the time of taking over.

Article 35
Compensation in case of declaration of interest in delivery

The provisions of Article 16, § 1 and those of Article 46 of the CIM Uniform Rules 1980 have been combined in a single article (cf. Article 26 CMR). In this case, likewise, the parties to the contract can agree the payment of a price supplement (Report on the Sixth Session, p. 29).

Article 36
Loss of right to invoke the limits of liability

This provision corresponds to Article 44 of the CIM Uniform Rules 1980, in the terms of the 1990 Protocol.

Article 37
Conversion and interest

The provisions of Article 47 of the CIM Uniform Rules 1980 have been reincluded, with the exception of § 3 concerning the minimum lump sum.

Article 38
Liability in respect of rail-sea traffic

The list of additional grounds for exoneration has been aligned to the Hamburg Rules and will in future include, apart from the grounds of "loading of goods on the deck", only the grounds of "fire" and "saving or attempting to save life or property at sea", as well as "perils, dangers and accidents of the sea". "Nautical fault" has not been reincluded as grounds for exoneration. Liability in rail-sea traffic is thus more severe than that according to the Brussels Convention of 1924 and the Hague-Visby Rules of 1968 (Report on the Sixth Session, p. 32/33).

Article 39
Liability in case of nuclear accidents

Article 49 of the CIM Uniform Rules 1980 has been reincluded as it stands.

Article 40
Persons for whom the carrier is liable

1. In the revision work, there was felt to be a need to regulate, if possible, all the "carrier-client-infrastructure manager" legal relationships in a uniform manner. As a consequence, the manager of the infrastructure becomes the auxiliary of the carrier by virtue of a legal definition or legal fiction. The purpose of this was to prevent the client from successfully taking legal proceedings against the infrastructure manager in accordance with the national law (i.e., within the limitations provided for in the CIM Uniform Rules). Otherwise, the scope of the carrier's liability on the one hand could differ from the scope of liability of the infrastructure manager (Report on the Fourth Session, p. 38).

2. Since the notion of the French term "agents" does not cover all the categories of persons for whom the carrier would be liable, the French wording has been aligned to the German text ("agents or other persons"); the title of this article has been adapted in both languages ("persons for whom the carrier is liable").

3. The provision of Article 50, § 2 of the CIM Uniform Rules 1980, favouring the rail carrier, has been removed. The fact that the carrier is not liable, even in the case of fault on the part of his agents, appeared to the Revision Committee to be difficult to defend from the point of view of legislative policy (Report on the Fourth Session, p. 38; see also the remarks relating to the Central Office draft of May 1995).

4. In accordance with the CMR, the Hamburg Rules and the Warsaw Convention, Article 40 states that agents and other persons must act "within the scope of their functions".

Article 41
Other actions

1. Article 51 of the CIM Uniform Rules 1980 has been reincluded. A proposal by Germany, seeking to specify the wording "in all cases in which these Uniform Rules apply" in respect of the rights of third parties, was rejected (Report on the Twentieth Session, Third Meeting, p. 21-23). The Revision Committee was of the opinion that the wording in force conveyed sufficiently the object of this provision.

2. The object of Article 41 is to limit extra-contractual proceedings, including those of third parties, in order to prevent the legal system for liability in respect of contractual proceedings from becoming devoid of meaning and, for this reason, to protect it in a general manner in cases in which unlimited proceedings could be instituted against a party to the contract on an extra-contractual basis. The typical case is that of the owner of the goods who is not himself the consignor, but a third party in respect of the contract of carriage. In this case, Article 41 can be invoked against the owner of the goods, otherwise the latter could still appeal to a third party as formal consignor in order to protect himself from unlimited extra-contractual proceedings in respect of the carrier (see Report on the Twentieth Session, Third Meeting, pp 21-23).

Title IV
Assertions of rights

Article 42
Ascertainment of partial loss or damage

1. The Revision Committee rejected a proposal to replace the current provisions by a more flexible procedure, following the model of Article 30 of the CMR (Report on the Sixth Session, p. 36; Report on the Twentieth Session, Third Meeting, pp 23-26). See also Article 47, extinction of proceedings against the carrier.

2. The Revision Committee did not accept a proposal aimed at including the infrastructure manager in the compilation of the ascertainment report. The infrastructure manager is considered as a person whose services the carrier makes use of for performance of transportation. It is not a matter for the CIM Uniform Rules to regulate the relations between the carrier and his auxiliaries (Report on the Sixth Session, p. 37).

Article 43
Claims

This article has been reincluded from Article 53 of the CIM Uniform Rules 1980, but with editorial adaptations. The Revision Committee rejected a proposal which sought to replace these provisions with a regulation identical to that in Article 30 of the CMR (Report on the Sixth Session, pp 37-39; Report on the Twentieth Session, Third Meeting, p. 26).

Article 44
Persons who may bring an action against the carrier

Apart from editorial amendments, this article has been reincluded from Article 54 of the CIM Uniform Rules 1980. The Revision Committee had refused to withdraw this article in accordance with the CMR system, according to which the right to institute legal proceedings depends on the existence of a substantive right. Article 44, in the terms approved by the Revision Committee and approved by the Fifth General Assembly, has the advantage of legal clarity and guarantees that the right to bring an action belongs to the person who has the right of disposal of the goods. The right of the consignor or of the consignee to bring an action is exclusive and alternative, i.e., it does not belong to one or the other. Legal succession or the assignment of debts is regulated by the national law (Report on the Sixth Session, p. 41; Report on the Twentieth Session, Third Meeting, p. 27).

Article 45
Carriers against whom an action may be brought

1. Article 36, final half-sentence, of the CMR, which allows plurality of legal proceedings, has not been reincluded. The reason for this difference between the CMR and the CIM was the problem of the solvency of the various road carriers, which did not appear to be as guaranteed as the solvency of the railways.

2. Since it is possible to understand the term "final carrier" to mean the carrier who is the last to accede to the contract of carriage by accepting the consignment note and the goods (see Article 26), and not the carrier who, according to the plan of the carrier who concluded the contract, would have been under obligation to deliver the goods to the consignee (Judgement of the Supreme Court of Appeals of France of 3.5.1994, see No. 3 of the remarks relating to Article 26), it is necessary for the purpose of passive legitimisation that this carrier be entered on the consignment note (see No. 4 of the remarks relating to Article 7).

3. Contrary to the provision of Article 45 of the CIM Uniform Rules, according to Article 36 of the CMR the rightful claimant may bring an action against several carriers. The road carriers are not jointly interested obliged parties in respect of the proceedings. Judgements which nonsuit the plaintiff thus do not develop effect in favour of the other carriers.

4. The Revision Committee discussed extensively the question of whether the substitute carrier must be expressly mentioned in this provision or whether the expression "carrier" is sufficient to allow direct proceedings against the substitute carrier. In the interest of terminological clarity – carrier intended always to mean only the contractual carrier (Article 3, letter a) – Article 45 was supplemented (§ 6) by a provision analogous to that of Article 27, § 2 (Report on the Sixth Session, p. 44/45).

5. See No. 3 of the remarks relating to Article 3.

Article 46
Forum

1. Article 46, § 1 clearly indicates that the CIM Uniform Rules have primacy over the provisions of the European Convention concerning judicial competence and the enforcement of judgements in civil or commercial matters. Article 46 does not contain any reservation in favour of the provisions relating to the place of jurisdiction which are contained in agreements between States or in concessions.

2. The criteria concerning the applicable law, of letters a) and b), have been taken from Article 31, Parag. 1 of the CMR. The terms used for "branch or agency" ("Zweigneiderlassung oder Geschäftsstelle") correspond to the criteria concerning applicable law used in Article 5, No. 5 of the European Convention on jurisdiction and the enforcement of judgements in civil or commercial matters. With regard to interpretation, the jurisprudence of the CJEC can be considered as *ratio legis*. According to this jurisprudence, the notion of branch, agency or any other establishment implies "a centre of operations which is outwardly manifested in a durable manner as the extension of a main establishment, so provided with a management and material equipment as to be able to negotiate business with third parties in such a manner that the latter, while being aware that a possible privity will be established with the main establishment, whose main offices are located abroad, are exempted from going directly to the latter, and can transact business at the centre of operations constituting its extension" (CJEC, Judgement of 22.11.1978 in the case 33/78).

3. § 2 corresponds to Article 31, Parag. 2 of the CMR and regulates the objection of lis pendens and of the possessing of force of law (res iudicata).

Article 47
Extinction of right of action

Article 57 of the CIM Uniform Rules 1980 has been reincluded. The Revision Committee did not support a proposal which sought to repeat the system of Article 30 of the CMR, according to which the acceptance of the goods without reservation constitutes only refutable proof that the carrier has received the goods in the condition described in the consignment note (Report on the Sixth Session, p. 47; Report on the Twentieth Session, Third Meeting, p. 31). The Revision Committee was of the opinion that the provisions of § 2 were sufficient to protect clients.

Article 48
Limitation of actions

1. Article 58 of the CIM Uniform Rules 1980 has been broadly included, but with simplification of the casuistic rules of § 2 concerning the commencement of limitation.

2. The Revision Committee rejected a proposal to make the periods the same as those in Article 32 of the CMR, i.e., every three years instead of every two years in the case of qualified fault (Report on the Sixth Session, p. 50; Report on the Twentieth Session, Third Meeting, pp 31-33).

Title V
Relations between Carriers

Article 49
Settlement of accounts

§ 1 repeats Article 59, § 1 of the CIM Uniform Rules 1980, § 2 repeats Article 35, Parag. 2 of the CMR (evidential value of the consignment note in the relationship in respect of subsequent carriers).

Article 50
Right of recourse

This provision corresponds to Article 60 of the CIM Uniform Rules 1980.

Article 51
Procedure of recourse

1. §§ 1 to 3 correspond to §§ 1 to 3 of Article 62 of the CIM Uniform Rules 1980.

2. § 4 concerning competence is based on Article 31, Parag. 1, letter a) of the CMR.

3. § 5 corresponds to Article 63, § 2 of the CIM Uniform Rules 1980.

4. Following the example of the CMR, the Central Office draft of May 1995 had abandoned the provisions of Article 62, § 5 of the CIM Uniform Rules 1980. Since there remains the possibility that that could entail a delay in the compensation procedure and thus an impairment of the situation of rightful claimants asserting their rights against a carrier, the Revision Committee decided, in the second reading, to introduce in § 6 a provision corresponding to Article 62, § 5 of the CIM Uniform Rules 1980 (Report on the Twentieth Session, Third Meeting, p. 35).

Article 52
Agreements concerning recourse

This solution corresponds, in principle, to Article 64 of the CIM Uniform Rules 1980 (cf. also Article 40 CMR).